INDEX.

	Page
Statement of the case	1
Questions presented	3
Historical analysis of constitutional and statutory requirements for electors in Georgia, with regard to payment of taxes as a prerequisite to voting	5
Source of authority with respect to levy of poll taxes	7
Classifications prescribed from time to time with respect to liability for poll taxes	8
Brief of law and argument	13
I. The right to vote is not a right arising by virtue of the Constitution of the United States	14
II. All contentions based upon the preamble to the Constitution or upon the provisions of article I defining the powers of Congress, or of article VI, clause 2, defining the supreme law are without merit	25
III. Regulations prescribed by state authority defining the qualifications of voters in the state are not prohibited by the Privileges and Immunities clause of Article IV, Section 2, Paragraph 1 of the Constitution of the United States	27
IV. The Constitution and laws of Georgia do not deny to citizens of the United States residing in Georgia a republican form of government as defined in Article IV, Section 4 of the Constitution of the United States	29
V. No right guaranteed by the First Amendment or by the Fifteenth Amendment to the Constitution is withheld by the challenged laws	33
VI. The contentions of appellant based upon the Fourteenth Amendment to the Federal Constitution are without merit	35
VII. A consideration of the nature of poll taxes and of the right of the state to classify its citizens with respect to liability therefor	42
VIII. An analysis of the constitutional attack based upon the Nineteenth Amendment	50
IX. No constitutional restriction upon a state's power to tax will be inferred	54
X. Poll taxes in Georgia are constitutionally limited to educational purposes, and a classification placing primary responsibility therefor upon men is both reasonable and natural	56
XI. Contentions based upon the Nineteenth Amendment to the Federal Constitution are without merit	58
XII. Authority of the Massachusetts woman-juror case	62
XIII. The separate classification of citizens above the age of sixty years is not unlawful	65
Conclusion	66

Appendix.

Constitutional requirements of the various constitutions of the State of Georgia and laws passed by the General Assembly from time to time relating to the qualification of voters, the amount of poll taxes assessed, and classifications of citizens with respect to liability for poll tax 69

Pleadings material to a consideration of the issues presented..... 87

Assignments of error in the petition to the Supreme Court of Georgia for appeal to the Supreme Court of the United States..... 98

Statement of points to be relied on in the Supreme Court..... 99

Cases Cited.

Anderson v. Baker et al. (Supreme Court of Maryland, November 2, 1865), 23 Md. 531..... 23

Billings v. U. S., 232 U. S. 261, 58 L. ed. 596..... 26
Board of Education v. Purse, 101 Ga. 422, Opinion, page 428..... 57
Bradwell v. State, 83 U. S. (16 Wall.) 130, 138, 21 L. ed. 442, 445..28, 39
Butler v. Perry, 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258, affirming 67 Florida 405, 66 So. 150.....35, 39, 60

City of Faribault v. Misnee, 20 Minn., p. 396..... 44
Commissioners of Ottawa County et al. v. Christian Nelson et al., 19 Kan. 234, 238, 241, 27 Am. Rep. 101.....45, 46
Commonwealth v. Welosky (Sup. Judicial Ct. of Mass., September 10, 1931), 276 Mass. 398, 177 N. E. 656 (certiorari denied 284 U. S. 684, 76 L. ed. 578, 52 S. Ct. 201)..... 63

Davidson v. New Orleans, 96 U. S. (6 Otto) 97, 105, 24 L. ed. 616, 620 26
Davis v. Ward, 155 Ga. 748, 118 S. E. 378.....53, 62

Ellenbecker v. Plymouth County, 134 U. S. 31, 34, 33 L. ed. 801, 803. 33
Evans v. McCave, 164 Tenn. 672, 52 S. W. (2d) 161..... 56
Ex parte Yarbrough, 110 U. S. 651, 28 L. ed. 274.....21, 34

Gogaur v. Timberlake et al. (Supreme Court of Indiana, Feb. 24, 1897), 148 Ind. 38, 46 N. E. 339, 62 Am. St. Rep. 487, 37 L. R. A. 644 36

Hill v. Roberts, 142 Tenn. 215, 217 S. W. 828.....55, 56
Hines et al. v. Mullins, Ordinary, 25 Ga. 696 (1), 697..... 57

In re Duncan (Texas, 1891), 139 U. S. 449, on p. 461, 11 S. Ct. 573, 35 L. ed. 219..... 31

Jacobson v. Massachusetts, 197 U. S. 11, 22, 49 L. ed. 643, 648..... 25

Karem v. United States (C. C. A. 6th Circuit), 121 F., p. 250..... 21
Kineen v. Wells et al., 144 Mass. 497, 11 N. E. 916, 59 Am. Rep. 105. 22
Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969..... 26

Lloyd v. Dollison, 194 U. S. 445, 447, 48 L. ed. 1062, 1065..... 33
Luther v. Borden et al., 48 U. S. (7 How.) 1, 12 L. ed. 581..... 31

McPherson v. Blacker, 146 U. S. 1, 36 L. ed. 869.....18, 19, 20
Michigan Central Railroad v. Powers, 201 U. S. 245, 50 L. Ed. 744.. 54
Miller v. Wilson, 236 U. S. 373, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915 F. 829..... 65

Minor v. Happersett, 88 U. S. (21 Wall.) 162, 22 L. ed. 627 ..... 15, 17, 18, 30, 36, 37, 52, 64, 65
Muller v. Oregon, 208 U. S. 412, 28 S. Ct. 324, 52 L. ed. 551, 13 Ann. Cas. 957 65
Munn v. Bowers (C. C. A. 2nd Circuit), 47 F. (2) 204, third division of opinion, p. 205, cert. denied by Supreme Court, 283 U. S. 845, 41 S. Ct. 492, 75 L. ed. 1454 26

Paul v. Virginia, 75 U. S. (8 Wall.) 168 (3), 180, 19 L. ed. 357, 360 28
Peacock v. Pratt (C. C. A. 9th Circuit, Feb. 9, 1903), 121 F. 772 26
Pohl v. Chicago, M. & St. Paul Rwy. Co. (1916), 52 Mont. 572, 160 P. 515 26
Pope v. Williams, 193 U. S. 621, 48 L. Ed. 817 36

Ratcliff v. Beale, 74 Miss. 247, 20 So. 865 40
Rawlins v. Georgia, 201 U. S. 638, 50 L. ed. 899, 26 S. Ct. 560 61
Riley v. Massachusetts, 232 U. S. 671, 34 S. Ct. 469, 58 L. ed. 788 65

Salt Lake City v. Wilson (decided April 2, 1915), 46 Utah 60, 148 Pac. 1104 ..... 47, 58
Sawyer v. City of Alton, 4 Ill. 127 45
Slaughter House Cases, 83 U. S. (16 Wall.) 36 (4), 77, 21 L. ed. 394, 409 29
South Carolina v. United States (Ct. Cl. 1905), 199 U. S. 454, 26 S. Ct. 110, 50 L. ed. 261, 4 Ann. Cas. 737 31
Stone v. Smith, 159 Mass. 413, 34 N. E. 521 23

Thompson v. Georgia Railway & Power Co., 163 Ga. 603 57
Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 87 Pac. 634, 9 L. R. A. (N. S.) 306, 12 Ann. Cases 314 ..... 44, 46, 65, 66

United States v. Cruikshank et al., 92 U. S. (2 Otto) 542, 23 L. ed. 588 ..... 21, 34
United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165 67
United States v. Susan B. Anthony (Circuit Court N. Y., June 18, 1873), 11 Blatchf. (U. S.) 200, 24 Fed. Cas. No. 14,459 38

Vertrees v. State Board of Elections (decided July 26, 1919), 141 Tenn. 645, 214 S. W. 737 ..... 55, 58

Williamson v. McLain, 147 Tenn. 491, 249 S. W. 813 56
Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583 ..... 40, 50, 60

Statutes Cited.

Code (1873), Secs. 809 (3), 5021, 5027 ..... 73, 74, 75, 76
Code (1882), Sec. 809 (3), 5183, 5032 ..... 75, 76, 77
Code (1895), Vol. I, Sec. 775, 766 ..... 76, 78
Code (1896), Vol. II, Secs. 5737, 5885 ..... 76, 77
Code (1911), Secs. 917, 1015, 6555, 6397 ..... 75, 76, 78, 80
Code (1933), Secs. 2-603, 2-5004, 2-6601; 2-8501, 53-501, 74-105, 92-108, 92-109, 92-5001, 92-6001 ..... 2, 3, 4, 7, 12, 27, 56, 57, 75, 76, 77, 85, 86
Code of 1933, Section 2-8501 27
Constitution of State of Georgia of 1789 ..... 5, 69
Constitution of State of Georgia of 1798 5
Constitution of State of Georgia of 1861 ..... 6, 72
Constitution of State of Georgia of 1865 ..... 6, 72

Constitution of State of Georgia of 1868.....6, 9, 73, 75
Constitution of State of Georgia of 1877.....6, 7, 27, 56, 76
Constitution of the State of Illinois, Art. VIII, Sec. 20..... 45
Constitution of the United States:
Art. I, Sec. 2 15
Fifteenth Amendment, Sec. 1.....15, 24, 33
First Amendment 33
Fourteenth Amendment 24
Nineteenth Amendment, Sec. 1..... 15

Former Constitution of State of Kansas, Article XI, Section 1..... 46
Former Constitution of State of Utah, Article IV, Section 1.....48, 58
Former Constitution of State of Utah, Article XIII, Setion 3..... 48
Former Constitution of State of Washington, Article I, Section 12.. 46

Georgia Code (1933), Section 2-6601..... 56
Georgia Code (1933), Section 53-501..... 57
Georgia Code (1933), Section 74-105..... 57
Georgia Laws (1825), p. 171..... 71
Georgia Laws (1842), p. 171..... 71
Georgia Laws (1849-50), p. 376..... 72
Georgia Laws (1865-66), p. 253..... 73
Georgia Laws (1869), p. 162..... 75
Georgia Laws (1870), p. 432..... 76
Georgia Laws (1882-3), pp. 120-121..... 78
Georgia Laws (1908), p. 27..... 79
Georgia Laws (1917), p. 197..... 4
Georgia Laws (1918), p. 44..... 81
Georgia Laws (1921), pp. 38 and 39.....10, 81, 82
Georgia Laws (1922), p. 21 .....10, 82
Georgia Laws (extraordinary session 1923, pages 20 and 21).....53, 83
Georgia Laws (1927), pp. 39, 57.....3, 11, 78, 81, 84
Georgia Laws (1927), pp. 56 and 57.....3, 78
Georgia Laws (1931), page 102..... 80
Georgia Laws (1935), p. 12.....3, 12, 85

Massachusetts General Laws, Chapter 234, Sec. 1..... 63

Particular Sections of the Constitution of Georgia of 1877:
Amendment ratified Oct. 7, 1908.....6, 79
Amendment ratified Nov. 8, 1932.....6, 80
Article VII, Sec. II, Par. III.....7, 56
Article XII, Par. 1..... 27
Article VIII, Sec. I, Par. 1..... 56

Tennessee Laws 1919, Chapter 139..... 55

Miscellaneous Cited.

20 C. J., Sec. 13, p. 60..... 14
20 C. J., Sec. 15, p. 60..... 18
20 C. J., Sec. 37, p. 75..... 59
61 C. J., Sec. 2255, p. 1534..... 42
Cobb's Analysis and Forms (1846), pp. 674, 675..... 70
Commentaries on the Constitution of the United States, by Joseph Story, Sec. 462 25
Cooley on Taxation (2nd Ed.), p. 8..... 26
Cooley on Taxation (4th Ed.), Sec. 1773..... 43

Digest of the Laws of Georgia (1837), by Oliver Prince, pages 842, 843, 862 and 911.....70, 71

Irwin's Code, Section 4980..... 73

"Laws of Georgia of force 1820-1829," by Arthur Foster, page 333.... 71
29 L. R. A. 404.... 43

McElreath on the Constitution of Georgia:
Page 264, Sec. 402.... 70
Page 247, Sec. 336.... 69
Page 296, Sec. 542.... 72
Page 315, Sec. 639.... 73
Page 321, Sec. 678.... 73
Page 322, Sec. 684.... 74
Page 356, Sec. 854.... 77
Page 384, Sec. 1005.... 76

Michie's Code (1926), Section 993 (4).... 75, 78
Michie's Code (1926), Section 1015.... 76
Michie's Code of 1926, Section 6397.... 80
Michie's Code (1926), Section 6555.... 76

Park's Code of 1914 (Vol. V), Section 6397.... 80
Park's Code (1914), Section 1015.... 76
Park's Code (1914), Vol. I, Section 917.... 75, 78
Park's Code (Vol. V), Section 6555.... 76

9 R. C. L., Sec. 56, p. 1040.... 59, 60
9 R. C. L., Sec. 40, p. 1024.... 14

T. R. R. Cobb's New Digest Laws of Georgia:
Pages 1044, 1124, 1066, 1074, 1080.... 70, 71, 72

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES.

No. 777, October Term, 1936.
No. 9, October Term, 1937.

NOLEN R. BREEDLOVE,
APPELLANT,

vs.

T. EARL SUTTLES, Tax Collector,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

This suit is a mandamus proceeding commenced by petition filed in the Superior Court of Fulton County, Georgia, by Nolen R. Breedlove, alleging himself to be a white male citizen of the United States of America, 28 years of age, and a resident of Fulton County, Georgia, for more than seven years next preceding the filing of the petition.

Upon interlocutory hearing a general motion to dismiss was sustained by the trial court, which in effect amounted to a dismissal of plaintiff's suit on general demurrer.

The Supreme Court of Georgia affirmed the judgment of the trial court and thereafter allowed an appeal to the Supreme Court of the United States.

Jurisdiction was noted in the Supreme Court of the United States reserving until the hearing "further consideration of the question of jurisdiction of this court."

The decision of the Supreme Court of Georgia, from which this appeal is taken, is found in volume 183 of the official reports of the Supreme Court of Georgia, page 189 (183 Ga., p. 189).

Portions of the pleadings material to a consideration of the issues presented and an analysis of the petition and amendments thereto are set forth in an appendix to this brief, beginning on page 69, immediately following page 67 of this brief.

The paragraph of the Constitution of Georgia which is challenged in this suit is Article II, Section I, Paragraph III of the Constitution of the State of Georgia (Section 2-603 of the Georgia Code of 1933), which is as follows:

> "To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes."

The pertinent provision of the General Tax Act challenged by the petition is Paragraph 1 of Section 2 of the General Tax Act approved March 28, 1935 (Ga. Laws 1935, p. 12), the pertinent language of which is identical with Section 92-108 of the Georgia Code of 1933, which section of the Georgia Code of 1933 is a codification of the corresponding paragraph of the General Tax Act approved August 25, 1927 (Georgia Laws 1927, page 57), and in the following language:

> "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1, which shall be used for educational purposes in instructing children in the elementary branches of an English education only: Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

QUESTIONS PRESENTED.

Questions presented to the Supreme Court of the United States for determination are the following:

(1) The sufficiency of the petition as amended and of the assignments of error to raise a substantial federal question.

(2) Whether or not that portion of the Constitution and laws of Georgia which requires the payment of poll taxes as a prerequisite for registration for voting violates any clause of the Federal Constitution set forth in the petition or the amendments thereto and upon which error may be properly assigned.

(3) No direct attack is made upon the paragraph of the

Constitution of Georgia above quoted defining the qualifications of electors. The gist of plaintiff's complaint is that the payment of accumulated past-due taxes with penalties and interest thereon accrued from year to year is said to have resulted indirectly, in his case, in an unlawful limitation upon his alleged right to vote.

The petition alleges that appellant was, on March 20, 1936, twenty-eight years of age, that he had never paid any poll taxes and that by reason of his default from year to year the Registrar of Fulton County refused to register him as a voter unless he paid the sum of thirteen dollars and fifty cents for poll taxes which had accrued against him for previous years, including penalty and interest.

An examination of the provisions of the Constitution and laws of Georgia quoted in the Appendix will disclose this sum of $13.50 alleged in the petition to have been required of petitioner, includes the sum of one dollar per year for each of six years that petitioner has been in default in the payment of toll taxes required of him and other citizens, a mandatory penalty of one dollar per year provided by Section 92-6601 of the Georgia Code of 1933 (quoted Appendix, page 85, and the sum of one dollar and fifty cents interest, which sum is the accumulated interest on the $1.00 tax which had been required of petitioner for each of the six years for which his default had continued, this interest being charged pursuant to the provisions of the Act approved August 20, 1917.

Georgia Laws 1917, page 197; *Code of 1933*, Section 92-5001.

HISTORICAL ANALYSIS OF CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR ELECTORS IN GEORGIA, WITH REGARD TO PAYMENT OF TAXES AS A PREREQUISITE TO VOTING.

A complete list of all relevant provisions of the various Constitutions of Georgia and of pertinent laws enacted pursuant thereto is incorporated in the Appendix, beginning on page 69, following this brief.

A review of this list will show that the people of Georgia have prescribed from time to time in their fundamental law the following constitutional provisions with regard to payment of taxes as a qualification for electors.

The Constitution of 1789, Article IV, Section I, required as a qualification for electors that they shall "have paid all taxes for the year preceding the election" (Appendix, page 69).

The Constitution of 1798, Article IV, Section I, required that they shall "have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election."

This Constitution further provided an exemption from this requirement in the following language:

> "Provided, that in case of invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the voters of such county, may meet under the direction of any three justices of the peace thereof, in the nearest county, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors" (Appendix, page 69).

The Constitution of 1861, Article V, Section I, prescribed that electors

> "shall have paid all taxes which may have been required of them, and which they have had an opportunity of paying agreeably to law, for the year preceding the election" (Appendix, page 72).

This identical language was incorporated in the Constitution of 1865, Article V, Section I (Appendix, page 72), and in the Constitution of 1868, Article II, Section II (Appendix, page 73).

The language was changed slightly in the Constitution of 1877 which provided (Article II, Section I, Paragraph II) as a qualification for an elector that he

> "shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election" (Appendix, page 77).

This provision of the Constitution of 1877 has been twice amended, first by the amendment ratified at a general election held October 7, 1908, and last by an amendment ratified at a general election held November 8, 1932.

The first of these two amendments (ratified October 7, 1908) is set forth on page 79 of the Appendix and required of the elector that he

> "shall have paid all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law."

The second and last amendment is the amendment now in question, ratified November 8, 1932 (page 2, supra), and

changed the language of the previous amendment ratified October 7, 1908, by striking therefrom the words

> "all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law"

and substituting in lieu thereof the words

> "all poll taxes that he may have had an opportunity of paying agreeably to law."

An examination of the statutes to which reference will now be made discloses that the language of the two last constitutional amendments ratified, respectively, in 1908 and 1932, has been construed to include both the masculine and feminine gender, and the petition concedes this, complaining only of the classifications prescribed by the State Constitution and laws with respect to persons above 60 years of age and with respect to females who do not register for voting, and of the indirect result in the case of petitioner of the application to him of the provisions of the Constitution and laws of the State of Georgia requiring payment of poll taxes.

Ever since the adoption of the Constitution of 1877 the amount of the poll tax for each year has been limited to $1.00 and the proceeds have been constitutionally allocated to educational purposes (page 3, supra).

SOURCE OF AUTHORITY WITH RESPECT TO LEVY OF POLL TAXES.

The levy of poll taxes is not required by the Constitution of Georgia. Article VII, Section II, paragraph III of the Constitution of Georgia (Georgia Code of 1933, Section 2-5004) provides only that

"no poll tax shall be levied except for educational purposes and such tax shall not exceed $1.00 annually upon each poll."

Pursuant to this constitutional authority and to similar authorities in other previous constitutions, the Legislature in the General Tax Acts passed from year to year has levied an annual poll tax not exceeding $1.00 upon each poll. This levy has remained effective until the adoption of the next General Tax Act on which subsequent date the former levy was superseded and poll taxes have been thereafter collected by virtue of the last General Tax Act providing therefor.

While some classifications which will be referred to in subsequent paragraphs of this statement have first appeared as special acts of the Legislature relating thereto, none of these acts providing for classifications only have ever provided for the levy of any poll tax and each one has been superseded from time to time by the terms of a General Tax Act providing a poll tax operating uniformly upon such classes of citizens as the Legislature has in the various General Tax Acts from time to time prescribed.

These classifications and the General Tax Acts which are now in question are analyzed in the next section of this statement.

CLASSIFICATIONS PRESCRIBED FROM TIME TO TIME WITH RESPECT TO LIABILITY FOR POLL TAXES.

The State, in the exercise of its sovereign power, has prescribed from time to time five distinct classifications of citizens who, because of their poverty, service to the

state, physical disability or consideration for natural limitations imposed by sex have been relieved of this obligation, either constitutionally or by statute.

The act approved December 12, 1804 (Appendix, page 70), provided a poll tax of

> "thirty-one and a quarter cents on all free male white persons of the age of twenty-one years and upwards in this State, provided, nevertheless, that in all cases of extreme indigence or infirmity, the inferior court of each county shall be and they are hereby authorized to remit the poll tax upon such indigent and infirm persons claiming the same."

The act approved December 24, 1825 (Appendix, page 71), introduced an exemption of persons sixty years of age and upwards.

This separate classification with respect to persons sixty years of age and upwards has been carried forward into every General Tax Act adopted by every subsequent Legislature for past one hundred years. Many of these acts appear in the appendix.

Both the Constitutions of 1868 and the present Constitution of 1877 authorize a poll tax "not exceeding one dollar annually on each poll," and limited as to use "for educational purposes only" (Appendix, pages 73 and 76), but the levy and classification of citizens with respect to liability for poll taxes has been statutory.

The third classification, relating to blind persons, was at first limited to "blind persons having in their own right taxable property not exceeding in value five hundred dollars" (Act approved March 18, 1869, Appendix, page 74), but beginning with the act approved December 22, 1886 (Appendix, page 75), was extended to cover all blind

persons, and this has remained the law of Georgia to the present date.

The fourth classification related to crippled and disabled Confederate soldiers, entered with the Act approved July 23, 1883, was carried forward through subsequent tax acts to and including the Act approved August 25, 1927, and the Codes of 1895, 1911, and Michie's Code of 1926. However, with the attainment of the age of sixty years by this class of citizens, this classification has been omitted from subsequent tax acts and from the present Code of 1933 (Appendix, pages 77 and 78).

Prior to the adoption of the Nineteenth Amendment to the Constitution of the United States the State of Georgia had never levied a poll tax upon any except its male citizens, and all general tax laws are so limited.

The fifth classification, relating to female citizens, followed the adoption of the Nineteenth Amendment to the Constitution of the United States. After the adoption of this amendment the Legislature by the General Tax Act effective beginning January 1, 1922 (Georgia Laws 1921, page 39), changed the former policy of this State, which had theretofore levied a poll tax only on its male inhabitants, by levying a poll tax

> "upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation a poll tax of one dollar which shall be for educational purposes" (Appendix, page 81).

This broad extension remained the law of Georgia for only one year, for beginning with the next session of the Legislature an act was passed August 21, 1922 (Georgia Laws 1922, page 21), which provided a separate classifi-

cation with respect to female inhabitants of the state who do not register for voting.

This classification was effected by adding to the General Tax Act, which had been approved the previous year, and to the corresponding section of the Code of Georgia, the following language:

> "Nor shall this Act (Tax) be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax due from the time they shall become eligible to vote to the date of their registration." (See Appendix, page 82.)

Section 3 and Section 4 of the Act approved August 21, 1922 (quoted on page 83 of the Appendix), and paragraph 1 (a) of the Act approved December 19, 1923, at the extraordinary session of the Legislature for that year (quoted on page 83 of the Appendix) were not carried forward into the General Tax Act approved August 25, 1927, effective beginning January 1, 1928 (Appendix, page 84); nor the General Tax Act approved March 28, 1935, effective beginning January 1, 1936. (Appendix, page 85); nor are the provisions of these sections of the Act approved August 21, 1922, and of the Act approved December 18, 1923, challenged in the petition.

The language of the General Tax Act approved August 25, 1927 (Georgia Laws 1927, page 57), with respect to the separate classification of females for poll tax purposes is as follows:

> "Nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting."

The language of the General Tax Act approved March 28, 1935 (Georgia Laws 1935, page 12), with respect to the separate classification of females for poll tax purposes is as follows:

> "Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

Section 92-108 of the Georgia Code of 1933, quoted on page 3 of this brief, is a codification of the General Tax Act approved August 25, 1927, and the language of the proviso is identical with the pertinent language of the General Tax Act approved March 28, 1935, above quoted, which is the last General Tax Act passed by the Legislature of Georgia and the General Tax Act under which poll taxes are now levied in this state.

BRIEF OF LAW AND ARGUMENT.

The points relied on by appellant in the various portions of the record disclosed by plaintiff's petition as amended will be treated in the following order:

I. The right to vote is not a right arising by virtue of the Constitution of the United States.

II. All contentions based upon the preamble to the Constitution or upon the provisions of article I defining the powers of Congress, or of article VI, clause 2, defining the supreme law are without merit.

III. Regulations prescribed by state authority defining the qualifications of voters in the state are not prohibited by the Privileges and Immunities clause of Article IV, Section 2, Paragraph 1 of the Constitution of the United States.

IV. The Constitution and laws of Georgia do not deny to citizens of the United States residing in Georgia a republican form of government as defined in Article IV, Section 4 of the Constitution of the United States.

V. No right guaranteed by the First Amendment or by the Fifteenth Amendment to the Constitution is withheld by the challenged laws.

VI. The contentions of appellant based upon the Fourteenth Amendment to the Federal Constitution are without merit.

VII. A consideration of the nature of poll taxes and of the right of the state to classify its citizens with respect to liability therefor.

VIII. An analysis of the constitutional attack based upon the Nineteenth Amendment.

IX. No constitutional restriction upon a state's power to tax will be inferred.

X. Poll taxes in Georgia are constitutionally limited to educational purposes, and a classification placing primary responsibility therefor upon men is both reasonable and natural.

XI. Contentions based upon the Nineteenth Amendment to the Federal Constitution are without merit.

XII. Authority of the Massachusetts woman-juror case.

XIII. The separate classification of citizens above the age of sixty years is not unlawful.

I.

THE RIGHT TO VOTE IS NOT A RIGHT ARISING BY VIRTUE OF THE CONSTITUTION OF THE UNITED STATES.

"The right to vote is a political right or privilege. It is not a natural right of the citizen, but a franchise dependent upon law, by which it must be conferred to permit its exercise."

Elections, Section 13, 20 C. J., page 60.

"The right of suffrage is derived from the States under State Constitutions, or in the territorial legislatures. It is not founded upon the Federal Constitution except in so far as the Fifteenth Amendment limits the right of the States to discriminate against persons by reason of their race, color, or previous condition of servitude."

Elections, Section 40, 9 R. C. L., page 1024.

The words of R. C. L. last quoted were written before the adoption of the Nineteenth Amendment to the Federal

Constitution. An analysis of authorities to be cited under later divisions of this brief will show that the only rights arising under the Constitution of the United States, or the amendments to the Constitution, with respect to suffrage, are those prescribed by the following sections and the following amendments, to wit:

(1) "The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Constitution of the United States, Article I, Section 2.

(2) "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Fifteenth Amendment, Section 1.

(3) "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

Nineteenth Amendment, Section 1.

The case of *Minor v. Happersett,* 88 U. S. (21 Wall.) 162, 22 L. ed. 627, decided at the October Term, 1874, of the Supreme Court of the United States, contains an exhaustive treatment of the nature of suffrage and a history of the classes entitled to its exercise under the Constitutions of the thirteen original states at the time of the adoption of the Federal Constitution and of the classes so entitled in states admitted into the Union during the early years of the republic.

In the opinion, 88 U. S. (21 Wall.) 172 and 173, 22 L. ed. 627, is an exhaustive analysis of the various constitutional requirements of the original thirteen states for the exer-

cise of the elective franchise therein, at or immediately after the time of the adoption of the Federal Constitution. This list of the separate provisions of the various State Constitutions cited as authority for the ruling by the Supreme Court of the United States that

> "the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted"

and the ruling of the Court therein that suffrage was not coextensive with citizenship in the states at the time of the adoption of the Constitution, includes the following separate categories then in force in the separate states:

New Hampshire excluded "paupers and persons excused from paying taxes at their own request."

Connecticut required either ownership of a freehold of forty shillings or forty pounds personal estate.

Massachusetts required either a freehold estate within the commonwealth with an annual income of three pounds or any estate of the value of sixty pounds.

New York required either possession and ownership of a freehold of the value of twenty pounds within the county or rental of a tenement therein of the yearly value of forty shillings.

New Jersey required ownership of "fifty pounds, proclamation money, clear in the same."

Maryland required ownership of a freehold estate of fifty acres of land in the county in which (the voter) offers to vote, and residing therein, or the possession of property in the state above the value of thirty pounds current money.

North Carolina required as a prerequisite to voting for senators ownership of a "freehold within the same county of fifty acres of land for six months next before and at the day of election."

South Carolina required ownership of a "freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot) * * * hath paid a tax the preceding year of three shillings sterling towards the support of the government."

Pennsylvania required two years' residence next before the election, and "within that time paid a State or County tax which shall have been assessed at least six months before the election."

Georgia required payment of tax for the year next preceding the election. (See *Opinion,* 88 U. S. [21 Wall.], pp. 172 and 173, 22 L. Ed. 629 and 630.)

One question under consideration in the Minor case was the effect of the first section of the Fourteenth Amendment to the Constitution of the United States upon a provision of the Constitution of the State of Missouri limiting suffrage in that state to male citizens. While this decision was rendered prior to the adoption of the Nineteenth Amendment, the unanimous decision is authoritative upon the jurisdiction of states in the matter of suffrage except in so far as that jurisdiction is limited by the Constitutional Amendments.

After observing *(Opinion,* 88 U. S., p. 178, 22 L. ed. 631, that the arguments advanced in behalf of this citizen might be appropriate for a legislative forum, but

"ought not to be permitted to influence our judgment

in determining the present rights of the parties now litigating before us,".

and that

"no argument as to woman's need of suffrage can be considered. We can only act upon her rights as they exist. It is not for us to look at the hardship of withholding. Our duty is at an end if we find it is within the power of a State to withhold,"

the Court closes with this paragraph:

"*Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon anyone,* and that the Constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment."

88 U. S. (21 Wall.) 178, 22 L. ed. 631.

With respect to the power of the states to confer and regulate the right of suffrage, Corpus Juris says:

"Subject to the 'constitutional restrictions as to race, color and previous condition of servitude, the States' had, after the adoption of the Fifteenth Amendment, 'supreme and exclusive power to regulate the right of suffrage and to determine the class of inhabitants who might vote.' "

Elections. Section 15, 20 C. J., p. 60.

The following excerpts from the opinion in the case of McPherson v. Blacker, 146 U. S. 1, beginning on page 25, define the rights of the states in this particular:

"The Legislative power is the Supreme authority except as limited by the Constitution of the State, and the sovereignty of the people is exercised through

their representatives in the legislature unless by the fundamental law power is elsewhere reposed * * *. What is forbidden or required to be done by a State is forbidden or required of the legislative power under State Constitutions as they exist. The clause under consideration does not read that the people or the citizens shall appoint, but that 'each State shall'; and if the words 'in such manner as the legislature thereof may direct' had been omitted, it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the State Constitution in that regard.

"The Constitution *does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors.* It recognizes that the people act through their representatives in the legislature, and *leaves it to the legislature exclusively to define the method of effecting the object.*"

McPherson v. Blacker, 146 U. S. 1, on pages 25 and 27, 36 L. ed. 874.

The portions of the opinion in this case above quoted are followed by a review of the journal of the constitutional convention and of the efforts therein made to provide that the President should be elected by "the citizens of the United States," or by the "people," or "by electors to be chosen by the people," all of which proposals were voted down in the convention. The opinion also reviews the various efforts which had been made from time to time, without success, to have the Constitution amended so as to provide for a uniform mode of choice by the people. After a further review of the powers vested in Congress with respect to elections for President and Vice-

President, and after observing that by article II, section 1, paragraph 3, Congress has power "to determine the time of choosing the electors and the day on which they are to give their votes which is required to be uniform throughout the United States," the Supreme Court says:

> "* * * otherwise the *power and jurisdiction of the State is exclusive,* with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and Federal influence might be excluded."
>
> *McPherson v. Blacker,* 146 U. S. 1, on page 35, 36 L. ed. 869, on page 877.

The McPherson case related to the constitutionality of an act of the Legislature of the State of Michigan passed in 1891, which directed that the manner of appointment of electors for President and for Vice-President of the United States should be the election of an elector and an alternate elector in each of the twelve congressional districts into which the State of Michigan was divided, and of an elector and an alternate elector at large in each of two districts defined by the act.

With further reference to the question of the constitutionality of the Michigan law, the Supreme Court said:

> "The right to vote intended to be protected refers to the right to vote as established by the laws and Constitution of the State. There is no color for the contention that under the amendment every male inhabitant of the State being a citizen of the United States has from the time of his majority a right to vote for presidential electors."
>
> *McPherson v. Blacker,* 146 U. S., pages 38 and 39, 36 L. Ed. 869, on page 878.

In *Ex parte Yarbrough,* 110 U. S., page 651, on page 663 et seq., 28 L. Ed. 274, on page 278, the Supreme Court of the United States defines the comparative functions of the Constitutions of the United States and of the states as a source of right with respect to the exercise of the elective franchise used, in the following language:

> "The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election of members of Congress. Nor can they prescribe the qualifications for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress. * * *"

An exceedingly clear statement of the function of a state in this regard and of the limitation imposed by the Fifteenth Amendment is found in the case of *Karem v. United States* (C. C. A. 6th Circuit), 121 F., p. 250, on p. 255, which case, after quoting from the decisions of the Supreme Court of the United States in the case of *United States v. Cruikshank et al.,* 92 U. S. (2 Otto) 542, 23 L. ed. 588, says:

> "The Fifteenth Amendment is therefore a limitation upon the powers of the States in the execution of their otherwise unlimited right to prescribe the qualification of voters in their own elections and the power of Congress to enforce this limitation is necessarily limited to legislation appropriate to the correction of any discrimination on account of race, color, or condition. The affirmative right to vote in such elections is still dependent upon and secured by the Constitu-

tion and laws of the State, the power of the State to prescribe qualifications being limited in only one particular. The right of the voter not to be discriminated against at such elections on account of race or color is the only right protected by this amendment, and that right is a very different right from the affirmative right to vote."

In a unanimous decision rendered May 11, 1887, in the case of *Kineen v. Wells et al.*, 144 Mass. 497, 11 N. E. 916, 59 Am. Rep. 105, the Supreme Judicial Court of Massachusetts said:

"The right or privilege of voting is a right or privilege arising under the Constitution of each State, and not under the Constitution of the United States. The voter is entitled to vote in the election of officers of the United States by reason of the fact that he is a voter of the State in which he resides. He exercises this right because he is entitled to by the laws of the State where he offers to exercise it and not because he is a citizen of the United States.

"The qualifications of voters are fixed by State legislation. The requisitions as to ownership of property, citizenship, sex, residence, in connection with the right of voting, vary with the Constitution or laws of the several States. However unwise, unjust, or even tyrannical its regulations may be in this regard, the right of each state to define the qualifications of its voters is complete and perfect, except so far as it is controlled by the Fifteenth Amendment (now the Fifteenth and Nineteenth Amendments) to the Constitution of the United States."

In a decision rendered prior to the adoption of the Fifteenth Amendment to the Constitution, and which has been cited substantially in other more recent decisions, is the

case of *Anderson v. Baker et al.* (Supreme Court of Maryland, November 2, 1865), 23 Md. 531, construing a state law limiting suffrage to white males above twenty-one years of age. The third headnote of this decision is as follows:

> "Among the absolute, unqualified rights of the States, is that of regulating the elective franchise. It is the foundation of State authority. The most important political function exercised by the people in their sovereign capacity. Whilst 'the right of the people to participate in the legislature is the best security of liberty and foundation of all free government,' yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected."

A leading case on this question is the case of *Stone v. Smith,* 159 Mass. 413, 34 N. E. 521 (decided by the Supreme Judicial Court of Massachusetts, June 22, 1893), which decision related to Article 3 of the Amendments to the Constitution of the State of Massachusetts requiring payment of state or county taxes within two years as a prerequisite of voting.

The following excerpts from the opinion in this case are directly in point:

> "The only provision of the Constitution of the United States as originally adopted concerning the qualification of electors in States is that prescribed in Article I, Section 2.
>
> "When the Constitution of the United States was adopted the qualifications required of an elector of a representative or representatives in the house of representatives of Massachusetts were:
>
> (1) He should be a male person twenty-one years

of age, resident in the town where he attempted to vote for the space of one year next preceding the election, and

(2) Should have a freehold estate within the town of the annual income of three pounds, or any estate of the value of sixty pounds.

"A constitution with such restrictions on the right to vote was regarded by the framers of the Constitution of the United States as Republican in form."

With respect to the Fourteenth Amendment to Constitution of the United States the Supreme Judicial Court of Massachusetts says:

"This distinctly recognizes the right of a state to deny or abridge the right to vote of the male inhabitants who are 21 years of age, and it is well known that many of the States have, from time to time, by an impartial and uniform rule of prohibition, denied the right to vote to such of their male inhabitants as were thought not to possess the qualifications necessary for an independent and intelligent exercise of the right.

"The right to vote is not one of the privileges and immunities of citizens of the United States within the meaning of Article 14 of the Amendments of the Constitution of the United States."

With respect to the prohibition of the Fifteenth Amendment, the Supreme Judicial Court of Massachusetts, speaking at a prior time to the adoption of the Nineteenth Amendment, says:

"This is the only prohibition of the States contained in the Constitution of the United States which concerns the right to vote."

II.

ALL CONTENTIONS BASED UPON THE PREAMBLE TO THE CONSTITUTION OR UPON THE PROVISIONS OF ARTICLE I, DEFINING THE POWERS OF CONGRESS, OR OF ARTICLE VI, CLAUSE 2, DEFINING THE SUPREME LAW, ARE WITHOUT MERIT.

"The Preamble never can be resorted to, to enlarge the powers confided to the general government, or any of its departments. It cannot confer any power per se. It can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power, when otherwise withdrawn from the Constitution."

Commentaries on the Constitution of the United States by Joseph Story, Section 462.

"Although that Preamble indicates the general purpose for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power. * * * Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power to be properly implied therefrom."

Jacobson v. Massachusetts, 197 U. S. 11, 22, 49 L. ed. 643, 648.

The limitation of article I, section 8, clause 1, defining the power of Congress to lay and collect taxes, which provides that

"all duties, imposts and excises shall be uniform throughout the United States,"

is a limitation only on Congress with respect to the taxes which Congress is authorized to impose.

This clause of the Federal Constitution "establishes the rule only for taxation by the Federal Government, and has no application to the powers of taxation of a state or territorial legislature."

Peacock v. Pratt (C. C. A. 9th Circuit, Feb. 9, 1903), 121 F. 772.

In so far as this particular clause of the Constitution is concerned, it imposes no restraints upon the state with respect to the method of state taxation.

Davidson v. New Orleans, 96 U. S. (6 Otto) 97, 105, 24 L. ed. 616, 620.

Likewise, article I, section 9, clause 4, prescribing the mode in which Congress may lay a capitation or other direct tax, is not a limitation on state power, but merely a limitation upon the power of Congress.

Pohl v. Chicago, M. & St. Paul Rwy. Co. (1916), 52 Mont. 572, 160 P. 515, citing *Cooley on Taxation* (2d Ed.), p. 8 (quoted 160 P. 516).

The requirement of uniformity imposed by the Constitution on Congress in levying excise taxes is *not intrinsic, but geographic.*

Billings v. U. S., 232 U. S. 261, 58 L. ed. 596;
Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969;
Munn v. Bowers (C. C. A. 2nd Circuit), 47 F. (2) 204, third division of opinion, p. 205, cert. denied by Supreme Court, 283 U. S. 845, 41 S. Ct. 492, 75 L. ed. 1454.

Article VI, Clause 2 of the Constitution of the United States, defines the supreme law of the land and the fact that the Constitution and laws of Georgia are grounded upon a due regard for this provision of the Federal Constitution is evidenced by Article XII, paragraph 1 of the present Constitution of the State of Georgia (*Code of 1933*, Section 2-8501), which is as follows:

> "The laws of general operation in this State are, first: As the Supreme law: The Constitution of the United States, the laws of the United States in pursuance thereof and all treaties made under the authority of the United States."

Appellee respectfully insists that this section of the Federal Constitution can have no application in the case at bar considered separately and apart from other provisions of the Federal Constitution, or laws of the United States or treaties made under the authority of the United States. The validity and binding authority of relevant portions of the supreme law are conceded, and appellee contends that no right of appellant arising either under the Constitution or under any law of the United States has been violated.

III.

REGULATIONS PRESCRIBED BY STATE AUTHORITY DEFINING THE QUALIFICATIONS OF VOTERS IN THE STATES ARE NOT PROHIBITED BY THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV, SECTION 2, PARAGRAPH 1 OF THE CONSTITUTION OF THE UNITED STATES.

It has been repeatedly held that the Privileges and Immunities Clause of Article IV of the Constitution of the

United States has no application to a citizen of the state whose laws are complained of.

Bradwell v. State, 83 U. S. (16 Wall.) 130, 138, 21 L. ed. 442, 445.

It was the object of this clause of the Constitution to relieve citizens of each state

> "from the disabilities of alienage in other states; it inhibits discriminating legislation against them by other states; it gives them the right of free ingress into other states, and egress from them; it insures to them in other states the same freedom possessed by the citizens in those states in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other states the equal protection of the laws * * *.
>
> "But the privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are common to the *citizens of the latter states under their Constitution and Laws by virtue of their being citizens.*"

Paul v. Virginia, 75 U. S. (8 Wall.) 168 (3), 180, 19 L. ed. 357, 360.

This clause of the Constitution

> "did not create those rights which it called privileges and immunities of citizens of the states. It threw around them in that clause no security for the citizens of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens.
>
> "Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise,

the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.

"It would be the vainest show of learning to attempt to prove by citations of authority that, up to the adoption of the recent amendment (the Fourteenth Amendment), no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the states—such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing obligation of contracts. But with the exception of those and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the Federal Government."

Slaughter House Cases, 83 U. S. (16 Wall.) 36 (4), 77, 21 L. ed. 394, 409.

IV.

THE CONSTITUTION AND LAWS OF GEORGIA DO NOT DENY TO CITIZENS OF THE UNITED STATES RESIDING IN GEORGIA A REPUBLICAN FORM OF GOVERNMENT AS DEFINED IN ARTICLE IV, SECTION 4 OF THE CONSTITUTION OF THE UNITED STATES.

The alleged denial to appellant of the enjoyment of the privileges of republican form of government is made the subject matter of the sixth assignment of error (Transcript pp. 39 and 40) and of the paragraph beginning at the middle of page 45 of the transcript of appellant's statement. This point is referred to in the first paragraph of plain-

tiff's first amendment (Transcript p. 20), but the amendment fails to set forth the particulars in which the alleged constitutional right has been violated.

The question of what constitutes a republican form of government has been the subject of careful analysis by the Supreme Court of the United States in a large number of well-considered cases, among them the following:

Minor v. Happersett, 88 U. S. (21 Wall.) 162, 22 L. ed. 627, which was a unanimous decision of the Supreme Court of the United States upon the constitutionality of a provision of the State Constitution of Missouri, which limited the right of franchise to male citizens only. Mrs. Virginia Minor, a native born white citizen of the United States and of the State of Missouri, over the age of twenty-one years, wishing to vote for electors for president and vice-president of the United States and for representatives in Congress at the General Election in November, 1872, applied to one Happersett, the registrar of voters, to register her as a lawful voter, which registrar refused to do, assigning for cause that the appellant was not "a male citizen of the United States," but a woman. Upon consideration by the Supreme Court of the United States of a challenge based upon Article IV, Section 4 of the Constitution of the United States guaranteeing a republican form of government, the Supreme Court said (88 U. S., p. 175, 22 L. ed. 631):

> "No particular government is designated as Republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.
>
> "The guaranty necessarily implies a duty on the part of the States themselves to provide such a gov-

ernment. All the States had government when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided: These governments the Constitution did not change. *They were accepted precisely as they were,* and it is therefore to be presumed that they were such as it was the duty of the State to provide."

This section of the Constitution expresses the full limit of national control over the internal affairs of the state. U. S. C. A., Part 2 of "Constitution," p. 427, citing:

> *South Carolina v. United States* (Ct. Cl. 1905), 199 U. S. 454, 26 S. Ct. 110, 50 L. ed. 261, 4 Ann. Cas. 737.

In *In re Duncan* (Texas, 1891), 139 U. S. 449 on p. 461, 11 S. Ct. 573, 35 L. ed. 219, the Supreme Court said in a unanimous opinion:

> "By the Constitution, a Republican Form of Government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies * * *; but, while the people are thus the source of political power, their governments, National and State, have been limited by written Constitutions, and they have themselves set bounds to their own power, as against the sudden impulses of mere majorities."

Luther v. Borden et al., 48 U. S. (7 How.) 1, 12 L. ed. 581, should forever set at rest any contentions of the character made by appellant with respect to whether or not the Constitution and Laws of Georgia establish and provide a

republican form of government within the meaning of the Federal Constitution and with respect to the functions and province of the state relative thereto.

The facts out of which the case of Luther v. Borden et al. arose are these:

At the time of the American Revolution Rhode Island, unlike her sister states, did not adopt a new Constitution, but continued the form of government established by the charter of Charles the Second, making only such alterations as were necessary to adapt it to their condition and rights as an independent state.

In 1841 a portion of the people held meetings and formed associations, which resulted in the election of a convention to form a new Constitution to be submitted to the people for adoption or rejection. This convention framed a constitution, directed a vote to be taken upon it, declared afterwards that it had been ratified by a majority of the people of the state, and under it elections were held for Governor, members of the Legislature and other officers who proceeded to assume their duties.

But the charter government did not acquiesce in these proceedings. On the contrary, it passed stringent laws, and finally passed an act declaring the state under martial law. In May, 1843, a new Constitution, which had been framed by a convention called together by the charter government, went into operation and had continued until the question was brought before the Supreme Court of the United States for determination.

The Supreme Court of the United States did not regard the question judicial in nature and held that the question as to whether a proposed constitution or amendment was ratified or not by the people of the state was a question for determination by the political department.

Under the charter government, the Legislature, in the exercise of delegated power, had confined the right of suffrage to freeholders (48 U. S. [7 How.], p. 35).

The constitutional convention, which assembled without the authority of the charter government, had framed a constitution by which the right of suffrage was extended to every male citizen of 21 years of age, who had resided in the state for one year, and in the town in which he offered to vote for six months next preceding the election (48 U. S. [7 How.] 35).

Upon a consideration of the question of jurisdiction, the Supreme Court said (opinion, 48 U. S. [7 How.], p. 40):

> "Certainly it is not part of the judicial functions of any court of the United States to prescribe the qualification of voters in a state, giving the right to those to whom it is denied by the written and established Constitution and laws of the state, or taking it away from those to whom it is given."

V.

NO RIGHT GUARANTEED BY THE FIRST AMENDMENT OR BY THE FIFTEENTH AMENDMENT TO THE CONSTITUTION IS WITHHELD BY THE CHALLENGED LAWS.

The First Amendment to the Constitution of the United States is not a limitation on the powers of the state.

Lloyd v. Dollison, 194 U. S. 445, 447, 48 L. ed. 1062, 1065;
Ellenbecker v. Plymouth County, 134 U. S. 31, 34, 33 L. ed. 801, 803.

The first paragraph of the Fifteenth Amendment of the Constitution of the United States is referred to in para-

graph 15 of the petition (Transcript p. 6), paragraph 30 of the petition (Transcript p. 10), and paragraph 34 (g) of the petition (Transcript p. 12). Appellant does not set forth anywhere in the petition or in the amendments thereto any connection between the act of the Tax Collector in denying registration without payment of taxes required by the State Constitution, and any pertinent status related in any way to either "race, color, or previous condition of servitude." The expressions used in paragraph 30 of the petition must be considered merely as either a flight of oratory or a play upon words.

United States v. Cruikshank et al., 92 U. S. (2 Otto), pp. 542, 555, 23 L. ed. 588, 592, and *Ex Parte Yarbrough*, 110 U. S., pp. 651, 665, 28 L. ed. 274, 278, define both the extent and the limitation of right arising under the Fifteenth Amendment with respect to the elective franchise.

> "In all cases where the former slave holding States had not removed from their Constitutions the words 'white man' as a qualification for voting, this provision did, in effect, confer on him the right to vote, because, being paramount to the State law and a part of the State law, it annulled the discriminating word 'white' (italics), and thus left him in the enjoyment of the same right as white persons."
>
> *Ex Parte Yarbrough*, 110 U. S., Opinion beginning page 665.

> "The right of suffrage is not a necessary attribute of national citizenship; but exemption from discrimination in the exercise of that right on account of race, etc., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States.

The first has not been granted or secured by the Constitution of the United States; but the last has."

United States v. Cruikshank et al., 92 U. S., opinion beginning page 555.

Butler v. Perry, 240 U. S. 328, 36 S. Ct. 258, 60 L. ed. 672, affirming 67 Fla. 405, 66 So. 150, involved a challenge upon the Florida Alternative Road Poll Tax Law. The state statute required every able-bodied male person between the ages of 21 and 45 years to perform six days labor on the roads, with an alternative poll tax of three dollars. The Supreme Court of the United States held that this statute did not impose involuntary servitude, a contention made in paragraphs 15, 30 and 34 (g) of the petition in the case at bar.

VI.

THE CONTENTIONS OF APPELLANT, BASED UPON THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION, ARE WITHOUT MERIT.

The analysis on page 103 of this brief discloses that appellant makes one general challenge, based upon the Fourteenth Amendment, and separate challenges based, respectively, upon the citizenship, the privileges or immunities clause, the due process and equal protection clauses thereof.

Although all challenges based upon the provisions of this amendment have been completely answered by a consideration in section I of this argument of the nature of the privilege of franchise, appellee respectfully submits the following additional authorities relating particularly to this amendment to the Constitution.

In *Gogaur v. Timberlake et al.* (Supreme Court of Indiana, Feb. 24, 1897), 148 Ind. 38, 46 N. E. 339, 62 Am. St. Rep. 487, 37 L. R. A. 644, as in *Minor v. Happersett,* 88 U. S. (21 Wall.) 162, supra, the right of women to vote by virtue of certain provisions of the Federal Constitution was inquired into.

The Fourteenth Amendment was cited by the appellant, and after quoting at length from Judge Cooley's "Principles of Constitutional Law"; Story, "Constitution" (5th Ed.); Black's "Constitutional Law," and other standard authorities, the Supreme Court of Indiana reviews in an exhaustive manner the scope and effect of the references in the Constitution of the United States to this subject, and says with respect to the right of the states in this regard:

> "It is upon this theory alone that the great variety of provisions with reference to suffrage and the qualifications upon which the privilege is founded in the several constitutions of the states, and, although not always in accord, they are not in conflict with the Constitution of the United States. Appellant is in error in assuming that citizenship and suffrage are by the Federal Constitution made inseparable. Many are citizens, and not voters, unless we may hold that the State Constitution does not discriminate against persons on account of age, residence, etc., and that disfranchisement for crime, etc., may not be made by law."

Pope v. Williams, 193 U. S. 621, 48 L. Ed. 817, challenged the action of a board of registry in the State of Maryland in refusing to register appellant as a legal voter on the ground of his noncompliance with the Maryland law making it necessary for a person coming into the state,

with the intention of residing therein, to register his name with the Clerk of the Circuit Court. This law, quoted in a footnote (193 U. S. 622), forbade registration as a legal voter to such a citizen until one year after his intent to become a legal voter had been thus evidenced.

Appellant sought to register for voting without complying with this law requiring a twelve months declaration, and challenged the statute as being repugnant to the citizenship clause and the equal protection clauses of the Constitution of the United States, and also as being repugnant to the

> "general spirit of the Constitution of the United States and the fundamental rights of citizens of the United States which deny to a State the power to attach unreasonable or burdensome conditions to the free movement of citizens of the United States out of, into and settlement within the confines of any State, District or Territory within the United States."

The issue was presented as to whether, with reference to the exercise of the privilege of voting in Maryland, the Legislature of that state had the legal right to provide that a person coming into the state to reside should make the declaration of intent a year before he should have the right to be registered as a voter in that state.

After observing that the privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments, and that the privilege is not one

> "springing from citizenship of the United States (Minor v. Happersett, 88 U. S. [21 Wall.] 162, supra). It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship in the United States,"

the Court had the following to say with respect to the freedom of the states in the regulation of the exercise of this privilege by citizens of the United States residing therein:

> "In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution. The state might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627, such persons were allowed to vote in several of the states upon having declared their intentions to become citizens of the United States. Some states permit women to vote; others refuse them that privilege. A state, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon anyone, and the conditions under which that right is to be exercised are matters for the states alone to prescribe, subject to the conditions of the Federal Constitution, already stated."

Prior to the adoption of the Nineteenth Amendment to the Federal Constitution a state did not violate either the letter or the spirit of the Fourteenth Amendment by denying to women the right to vote on account of sex.

United States v. Susan B. Anthony (Circuit Court N. Y., June 18, 1873), 11 Blatchf. (U. S.) 200, 24 Fed. Cas. No. 14,459. This Court says (24 Fed. Cas., p. 831, column 1):

> "This view is assumed in the second section of the fourteenth amendment, which enacts, that if the right to vote for federal officers is denied by any state to

> any of the male inhabitants of such state, except for crime, the basis of representation of such state shall be reduced in a proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a state, notwithstanding the existence of that clause * * * to deny to classes or portions of the male inhabitants the right to vote which it allowed to other male inhabitants. The regulation of the suffrage is thereby conceded to the States as a States' right."

The *opinion in the Susan B. Anthony case then cites Bradwell v. the State,* 83 U. S. (16 Wall.) 130, as authority for two propositions, namely: First, that the rights referred to in the Fourteenth Amendment are those belonging to a person as a citizen of the United States and not as a citizen of the state; second, that a right of the character here involved is not one connected with citizenship of the United States. The Bradwell case was an appeal to the Supreme Court of the United States by one Mrs. Myra Bradwell on writ of error to the Supreme Court of Illinois, from an adverse judgment of the state court denying to the appellant the right to practice law in the State of Illinois, because females were not by state law eligible to practice law in the courts of that state. Article IV, Section 2, and the Privileges and Immunities Section of the Fourteenth Amendment were each relied on by Mrs. Bradwell in her appeal based on alleged constitutional rights.

In *Butler v. Perry,* 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258, affirming 67 Florida 405, 66 So. 150, the Supreme Court of the United States upheld against a challenge based upon the Fourteenth Amendment a state statute imposing a poll tax of three dollars as an alternative for

work on the roads and bridges of the county for six days of not less than ten hours each in each year when summoned to do so. The statute there challenged was limited in its application to able-bodied male persons between the ages of 21 and 45 years.

Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583, was a criminal case in which by motion to quash the indictment the defendant, a negro, attacked the clause of the State Constitution which provided, among other things, that in order to be a juror one must be an elector.

The appellant alleged that the State Constitution required that those offering to vote should produce to the election officers satisfactory evidence that they had paid all taxes, and that in pursuance of its power to enforce this provision of the Constitution the Legislature had enacted certain statutes quoted in the footnotes providing, among other things, for the appointment of election managers and defining their duties.

The Constitution of the state provided for the payment of a poll tax, and the opinion of the Supreme Court assumes that its payment was a "condition of the right to vote." (See *Opinion,* 170 U. S., p. 222, 42 L. Ed. 1015.)

It further appeared, both from the opinion in the Supreme Court and from the case of *Ratcliff v. Beale,* 74 Miss. 247, 20 So. 865, referred to therein, that without expressly violating the inhibitions of the Fifteenth Amendment, the State of Mississippi had so framed its laws with respect to the qualifications of voters as to necessarily exclude all citizens possessing peculiarities which were generally possessed by members of the negro race.

The constitutional provisions prescribing the qualifica-

tions of electors (made by reference a prerequisite to qualification for jury service) appearing from excerpts from the Constitution and laws quoted in the margin, including:

(1) Two years residence in the state;

(2) One year's residence in election district or city or town;

(3) Absence of conviction of either of a list of nine crimes;

(4) Payment on or before February 1st of all taxes required of the voter and of which he has had an opportunity to pay for the two preceding years;

(5) Production of satisfactory evidence of payment of taxes;

(6) Taking an oath embodying all of the above elements and further that the voter will "truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this district."

(7) Ability to read any section of the Constitution of the state, or to understand the same when read to him, or give a reasonable interpretation thereof,

the motion

"further alleged that the constitutional convention (at which this Constitution was adopted) was composed of 134 members, only one of whom was a negro; that under prior laws there were 190,000 colored voters and 69,000 white voters"

(170 U. S., page 215), and complains of the method of adoption of the State Constitution and of the challenged ordinances. (Compare the allegations of paragraph 32 of the petition in the case at bar. Transcript pages 10 and 11.)

The Supreme Court refused to interfere with the conviction, holding that

> "if weakness were to be taken advantage of, it was to be done 'within the field of permissible action under the limitation imposed by the Federal Constitution,' "

and that the

> "means of it were the alleged characteristics of the negro race, not the administration of laws by officers of the State."

The Court said:

> "It cannot be said, therefore, that the denial of the equal protection of the laws arises primarily from the Constitution and laws of Mississippi."
>
> *Opinion,* 170 U. S., p. 222, 42 L. ed. 1015.

VII.

A CONSIDERATION OF THE NATURE OF POLL TAXES AND OF THE RIGHT OF THE STATE TO CLASSIFY ITS CITIZENS WITH RESPECT TO LIABILITY THEREFOR.

Section 2255, 61 *C. J.*, p. 1534, says:

> "Unless forbidden by the Constitution, capitation or poll taxes are regarded as a lawful means of raising revenue for public purposes. The nature and purpose of a poll tax is such that it cannot be applied universally, but must be by means of approximate classification. Hence, except where required by a constitutional provision, exact uniformity is not essential. Where the Constitution exempts particular classes from poll taxes, such exemption does not violate a constitutional requirement of equality of taxation."

Cooley on Taxation (4th Ed.), Section 1773, says:

> "It is generally held that the requirement in a state constitution that taxes shall be equal and uniform does not apply to poll taxes, or at least not to poll taxes in the nature of road labor. It has been held that the requirement that 'taxes raised in this state shall be as nearly equal as may be,' does not preclude the customary poll taxes and exemptions in respect to them, either because such an imposition is deemed not a tax, but instead an exercise of the police power or because the tax is not a property tax. Even if the equality and uniformity clause be deemed applicable, poll taxes do not violate it, at least under the rules governing in most jurisdictions, merely because of a reasonable classification. 'Constitutional requirement of uniformity is satisfied whenever all citizens of the same class are taxed alike.' Thus a poll tax for highway purposes limited to males between the ages of twenty-one and fifty does not violate the state constitution.
>
> "Poll taxes may be required only from males between the ages of twenty-one and sixty. So a street poll tax is 'uniform in respect to persons' although it exempts minors and females. A poll tax on males does not violate the constitutional provision because of discrimination on account of sex."

The privilege of the state with respect to classification of its subjects for poll tax purposes is well illustrated and defined by a series of exhaustive case notes in L. R. A. and Annotated Cases, to which reference will now be made.

29 L. R. A., page 404, contains an exhaustive note with respect to the nature of poll taxes, the power of the state to impose same and restrictions and limitations thereon, and the right of the state to require payment of poll taxes as a qualification of electors.

The case of *Thurston County v. Tenino Stone Quarries,* 44 Wash. 351, 87 Pac. 634, 12 Ann. Cases 314, 9 L. R. A. (N. S.) 306, has been made the foundation of exhaustive case notes in 12 Annotated Cases regarding the right of the state to classify citizens according to age with respect to poll tax liability and with respect to the right of the state to exempt persons engaged in certain occupations from liability for poll taxes.

The Supreme Court of Minnesota in the case of the *City of Faribault v. Misnee,* 20 Minn., page 396, stated that poll taxes, when authorized to be levied by the Legislature, were of such a nature that

> "it is clear that in the exercise of its right to levy poll taxes, the Legislature must deviate to some extent from any * * * Procrustean standard of equality."

This Minnesota decision was rendered in a case where the constitutionality of a poll tax exempting the members of fire companies was attacked because of an alleged unconstitutionality based upon a provision of a state constitution, as follows:

> "All taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state."

The Supreme Court of Minnesota in the case last cited also analyzed the comparative features of those taxes which are strictly capitation or poll taxes and that class of poll taxes which is prescribed as an alternative for road work, and said that the classes were subject to the same constitutional requirements with respect to uniformity.

Judge Cooley, in his work on taxation (4th Ed.), also

distinguishes between the two classes of poll or capitation taxes, but treats the two in the same division of his exhaustive analysis and applies the same rules thereto with respect to the privileges of classification and of exemption.

The Supreme Court of Illinois in the case of *Sawyer v. City of Alton*, 4 Ill. 127, had under consideration the constitutionality of an alternative road poll tax applicable to "all male persons between the ages of twenty-one and fifty years."

Article VIII, Section 20, of the Constitution of the State of Illinois was at that time as follows:

> "That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."

Against a constitutional attack based upon this article of the State Constitution, the Supreme Court held (Opinion 4, Ill. p. 130):

> "We are of the opinion the framers of the Constitution intended to direct a uniform mode of taxation on property, . . .
>
> "We cannot believe they intended that all the public burdens should be borne by those having property in possession, wholly exempting the rest of the community who, by the same Constitution, were made secure in the exercise of the rights of suffrage, and all the immunities of the citizen. If the power claimed in this case cannot be exercised, it is difficult to perceive how the right to require service on the juries, and in the militia, can be justified."

The case of *Commissioners of Ottawa County et al. v. Christian Nelson et al.*, 19 Kan. 234, 238, 241, 27 Am. Rep.

101, was an injunction suit to restrain the collection of a tax levied to retire an issue of bonds. The attack on the constitutionality of the levy was based upon Article XI, Section 1 of the State Constitution, quoted in opinion, 19 Kan., page 237, which provided:

> "The legislature shall provide for a uniform and equal rate of assessment for taxes."

The Court said (Opinion 19, Kan., p. 241):

> "Neither do we suppose that capitation taxes or poll taxes, or requirements to work on the roads, or to train in the militia, come within said Constitutional provision, although they are all taxes in one sense."

In the case of *Thurston County v. Tenino Stone Quarries,* 44 Wash. 351, 87 Pac. 634, 9 L. R. A. (N. S.) 306, 12 Ann. Cases 314, the Supreme Court of the State of Washington had under consideration a state statute levying a poll tax limited in its operation to male citizens between ages of twenty-one and fifty years.

The statute was attacked upon the ground that it was not uniform as to persons, that it exempted females, firemen and males over fifty and under twenty-one years of age, the constitutional attack being predicated upon the Fourteenth Amendment to the Federal Constitution and upon Sections 3 and 12 of Article I of the State Constitution, Section 12 of the State Constitution being as follows:

> "No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens or corporations."

The Supreme Court of Washington, in the opinion, upheld the argument that

> "the nature and purpose of a poll tax is such that its application should not be universal, but by means of appropriate classifications * * * the reason for such classifications is found in the nature of the subject matter itself. * * * Other reasons for the exemption of females may be found in the fact that * * * it has always been the policy of the law to show some deference to women by reason of the physical limitations imposed by nature.
>
> "That there is an age when, by reason of immaturity the imposition of this public service or tax should not be made, is evident, as is likewise the proposition that an age may be reached when a man should not be called upon to render this character of service or pay a per capita tax.
>
> "It is contended that the fixing of the ages at twenty-one and fifty is arbitrary. This is true; but the nature of the subject matter makes it essential that arbitrary limits should be established. The same contention might be made with reference to the statute which fixes the completion of twenty-one years as a prerequisite to the privileges and obligations of legal manhood. Similar statutes limit the years during which one may become or may be required to become a member of the militia or to serve upon a jury."

The Supreme Court of Utah, in a well considered decision in the case of Salt Lake City v. Wilson (decided April 2, 1915), 46 Utah 60, 148 Pac. 1104, had under consideration a statute of the State of Utah providing among other things for an annual road poll tax of two dollars levied upon

> "every man over twenty-one and under fifty years of age, not physically incapacitated to work and not exempted by law."

The exemptions were such as were usual in such cases, namely:

> "Voluntary firemen and officers, musicians and members of the National Guard."

The constitutional attack was based in part upon Article IV, Section 1 of the State Constitution, and upon Article XIII, Section 3 of the State Constitution.

Article IV, Section 1 of the State Constitution contained exactly the same language as the first section of the Nineteenth Amendment to the Federal Constitution, and in addition thereto provided generally for equality of the sexes with respect to all civil, political and religious rights and privileges.

Article XIII, Section 3 of the State Constitution, directed that the Legislature shall provide for a uniform and equal rate of assessment and taxation, and shall, by general law, provide such regulations as shall secure a just valuation for taxation of all property

> "so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

The Supreme Court of Utah upheld the constitutionality of the state law against both attacks, saying, with respect to the right of the Legislature to classify separately its male and female citizens:

> "Why should not women be exempt from the performance of some duties which are imposed on men? Surely one need not at this day and age point out the physical differences that exist between the sexes, nor dwell upon the reasons why females, in the nature of things, cannot respond to all the demands of the state. To perform labor on the public roads or streets, or to

pay the sum of two dollars for the purpose of improving them is neither a political, religious or other civil right or privilege. * * * In practice the imposition and payment of a road poll tax by women would, in the long run, and in a large measure at least, merely add an additional burden on a large number of men, and thus instead of bringing about uniformity of burdens, would tend to the opposite result. It is a matter of general knowledge that man, during his active career, is the breadwinner for the family, and upon him must fall the direct burden of discharging the public duties, and especially so when physical exertion and strength are required. Now, to the ordinary married man, it would be utterly immaterial whether two days labor or two dollars in money were required by the state, since he would have to perform the one or pay the other. He not only would have to pay the money, but he would have to earn it.

"Entirely apart from the legal phase of the question, however, how does it benefit the married man to require his wife or his daughters to pay a road poll tax? It would only tend to place an additional burden on him without benefiting anyone. Even if counsel's contentions were conceded, therefore, he would not gain anything in a practical sense. Of course, such consequence would not control the principle he contends for if it were true that, under the constitutional provision which he invokes, women may not be put in a class by themselves. Such a classification has, however, always been made and enforced from time immemorial, and, unless prohibited in express terms in the Constitution, it is a natural and proper one to make. We can discover nothing in the constitutional provision now under consideration which prohibits such a classification, and hence the contention cannot prevail."

VIII.

AN ANALYSIS OF THE CONSTITUTIONAL ATTACK BASED UPON THE NINETEENTH AMENDMENT.

The sentence in the case of *Williams v. Mississippi,* 170 U. S. 213, beginning with the sixth line from the bottom on page 22 of the opinion, in which the Supreme Court of the United States stated that it could not in that case be said that the denial of equal protection of the laws arises primarily from the Constitution and Laws of Mississippi affords one avenue to a correct decision of the federal question here sought to be raised. There are many other avenues which lead to the same conclusion, but, before proceeding thereto, it would be well to compare the language of the first section of the Nineteenth Amendment with that of the first section of the Fifteenth Amendment and to consider further the nature of the attack made by petitioner.

The restrictive language defining the quantum of the restriction upon state sovereignty by the first section of the Fifteenth Amendment is the same as that used in the first section of the Nineteenth Amendment. The determinative factor in the restriction imposed is different. The former forbids a state to either deny or abridge the right of citizens of the United States to vote on account of "race, color or previous condition of servitude." The latter forbids a state to either deny or abridge the right of citizens of the United States to vote "on account of sex."

The limitation imposed by the Nineteenth Amendment is a right arising by virtue of the Constitution of the United States, and if this right has been violated appellant would have a substantial federal question, if he is qualified to make the challenge and if his challenge has been properly made and preserved.

For reasons that now follow, appellee respectfully insists that no substantial federal question is presented with respect to the Nineteenth Amendment, and that the contentions of appellant are without merit.

It affirmatively appears from the petition and from the laws of the State of Georgia, which are quoted in the Appendix and analyzed in the statement of the case herein, that appellant at the time he sought to register for voting was a tax defaulter, owing at least six years poll tax, amounting to one dollar per year, a statutory penalty of one dollar per year for each one of the years of default, and accumulated interest on past-due taxes in the amount of $1.50. No part of this indebtedness is attacked separately, but appellant claims a substantial federal question because of the incidental effect of his continued default upon a uniform qualification required of all electors, male and female alike, that each "shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law" before he is entitled to register and vote. As has been pointed out in the statement of the case, this pronoun "he" includes voters of both genders and has been uniformly so construed.

Appellant does not and cannot deny that payment of poll taxes as a prerequisite to registration for voting is required of all male and female electors alike, with the exception of voters who are over sixty years of age and who are blind, for both of whom separate classifications are provided. The exception with respect to persons over sixty years of age is made the subject of section XIII of this brief, and the exception with respect to blind persons is not challenged by petitioner.

Women who fail to pay the poll tax required are subject to the same penalties, and their past-due taxes bear the same rate of interest as poll taxes assessed against

male citizens. The petitioner who, so far as it appears from the petition, is an able-bodied man, has been subject to a uniform capitation tax of one dollar per year since he became twenty-one years of age, and, if he had paid this tax from year to year as required, could have registered for voting without paying any amount whatsoever at the time he sought to register.

Male and female citizens who vote are each required to pay the same tax (with the exception of blind persons), and the man and the woman who attains voting age and exercises the franchise each becomes subject to the tax on the effective date (which is January 1st) following their twenty-first birthday.

Petitioner seeks the remedy of mandamus by reason of an alleged burden which has been placed upon him solely because of his default.

The State of Georgia, which was at the time of the adoption of the Federal Constitution, according to the analysis in *Minor v. Happersett,* 88 U. S. (21 Wall.), pages 172 and 173, the most liberal among the states there listed with respect to its franchise laws, has recently, with the adoption of constitutional amendment ratified November 8, 1932, abolished her former law which required of citizens the payment of all taxes as a prerequisite for registration, and now requires only that her citizens shall contribute the sum of one dollar per year as a poll tax constitutionally allocated to educational purposes before being entitled to the elective franchise.

Appellant's contention means, in effect, either that the Nineteenth Amendment to the Federal Constitution automatically wrote into the general tax act of the State of Georgia an extension of the poll tax levy to include all female citizens or that immediately upon the adoption of the Nineteenth Amendment to the Federal Constitution

Georgia's age-old poll tax levy authorized by the Constitution of the state and re-enacted in substantially the same form for a period of approximately one hundred fifty years, immediately became void and the State of Georgia did not thereafter have the right to limit its poll tax levy to male citizens only.

The Supreme Court of Georgia, in the case of *Davis v. Ward,* 155 Ga. 748, opinion beginning on page 782 (118 S. E. 378, opinion beginning on page 394, Col. I), held that the adoption of the Nineteenth Amendment did not have the effect of writing into the general tax act then in force an extension of the poll tax theretofore required of male citizens to include the claim of female citizens theretofore exempted.

Beginning with the general tax act adopted December 19, 1923 (Ga. Laws Extraordinary Session 1923, page 20), the State of Georgia has uniformly levied a poll tax of one dollar "upon all male citizens between the ages of twenty-one and sixty years aud upon all female citizens who register for voting." The only exemption of citizens within these classes is an exemption with respect to blind persons, which is not the subject matter of attack in plaintiff's suit.

Only female citizens who do not register for voting are classified separately with respect to poll tax liability so as to be relieved of assessment therefor. This separate classification by the State of Georgia of its citizens for poll-tax purposes is not a federal question, and, if it were, petitioner, who is a male citizen, is not entitled to complain.

IX.

NO CONSTITUTIONAL RESTRICTION UPON A STATE'S POWER TO TAX WILL BE INFERRED.

Petitioner seeks, not to attack a statute creating an exemption, but a General Tax Act which has been enacted in substantially the same form from year to year, imposing a tax upon well-defined classes of citizens.

The Supreme Court of the United States, in Michigan Central Railroad v. Powers, 201 U. S. 245, opinion beginning page 292, 50 L. ed. 744, says:

> "We have had frequent occasions to consider questions of State taxation in the light of the Federal Constitution, and the scope and limits of National interference are well settled. There is no general supervision on the part of the Nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court in this case (page 232):
>
> " 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to the States to adopt an ironclad rule of equality, to prevent classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with National justice."

The Supreme Court of Tennessee, in the case of *Vertrees v. State Board of Elections,* 141 Tenn. 645, 214 S. W. 737, had under consideration an attack upon Chapter 139 of the Acts of 1919 of the Legislature of the State of Tennessee, which, generally speaking, authorized women of lawful age to vote at elections for municipal officers and to vote for electors for President and Vice-President, and upon all questions or provisions submitted exclusively to the vote of the electors of any municipality.

The gist of the attack was the omission of the Legislature to pass an act assessing women with the poll tax, whereas the Constitution required payment of a poll tax of

> "all male citizens of this State over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity."

Section 3 of the Act of 1919, which enfranchised women in Tennessee, required that they submit evidence of payment of poll taxes in the same manner as male voters, but the Legislature had never in fact imposed any poll tax upon women and the act in question

> "did not attempt to levy or assess any poll tax against women."

The Supreme Court of Tennessee upheld the constitutionality of the state law classifying men and women separately with respect to poll tax liability, levying a tax upon men and exempting women entirely, and recognized in the opinion the well-settled principle that a constitutional limitation upon the power of taxation will never be inferred or implied.

This Tennessee case has been cited frequently in subsequent decisions, including *Hill v. Roberts,* 142 Tenn. 215,

217 S. W. 828; *Williamson v. McLain,* 147 Tenn. 491, 249 S. W. 813; *Evans v. McCave,* 164 Tenn. 672, 52 S. W. (2d) 161.

X.

POLL TAXES IN GEORGIA ARE CONSTITUTIONALLY LIMITED TO EDUCATIONAL PURPOSES AND A CLASSIFICATION PLACING PRIMARY RESPONSIBILITY THEREFOR UPON MEN IS BOTH REASONABLE AND NATURAL.

Upon the basis of authorities cited throughout this brief, appellee contends that the question of the reasonable quality of the classification of citizens for poll tax purposes is a state question, and that no federal question is involved.

However, if the reasonableness of the classification should be material for any reason, appellee respectfully cites the following provisions of the Constitution and Code of Georgia, which furnish additional reasons for the separate classification by the State of Georgia of men and women for poll tax purposes.

Article VIII, Section I, paragraph I of the Constitution of Georgia (Georgia Code of 1933, Section 2-6601), provides for a thorough system of common schools for the education of children, and provides that

> "the expenses (thereof) * * * shall be provided for by taxation or otherwise. The schools shall be free to all children of the state."

By Article VII, Section II, paragraph III of the Constitution of the State of Georgia (Georgia Code of 1933, Section 2-5004) the authority of the Legislature of Georgia to

levy a poll tax is limited to a tax not exceeding one dollar for educational purposes.

In Georgia the husband is designated by law as the head of the family, and it is the obligation of the father to provide for the maintenance, protection and education of his children.

Section 53-501 of the Georgia Code of 1933, providing the status of the husband as the head of the family, is as follows:

> "The husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order."

Section 74-105 of the Georgia Code of 1933, defining the father's obligation with respect to the education of his child, is as follows:

> "Until majority, it is the duty of the father to provide for the maintenance, protection and education of his child."

The primary obligation of the father with respect to the burden of the education of his children as it existed at common law is now the law of Georgia. The Supreme Court of Georgia in the case of *Board of Education v. Purse*, 101 Ga. 422, see opinion, page 428, reviewed the history of the common law in this regard, citing Blackstone, Kent and other authorities.

Other Georgia cases upon this duty of the father include the following:

> *Hines et al. v. Mullins, Ordinary*, 25 Ga. 696 (1) 697; *Thompson v. Georgia Railway & Power Co.*, 163 Ga. 603.

XI.

CONTENTIONS BASED UPON THE NINETEENTH AMENDMENT TO THE FEDERAL CONSTITUTION ARE WITHOUT MERIT.

The liberty of the individual state regarding its right to classify citizens with respect to liability for poll tax is one question and the right of the individual state to define who shall be entitled to the privilege of the elective franchise is an entirely separate and distinct question.

The State of Tennessee and State of Utah have each upheld a classification of their citizens with respect to poll tax liability where poll taxes were assessed against men alone and women were wholly excluded from all liability therefor in cases where the indirect effect upon state laws requiring payment of poll taxes as a prerequisite to registration for voting was directly involved.

The Supreme Court of Tennessee in the case of *Vertrees v. State Board of Elections* (decided July 26, 1919), 141 Tenn. 645, 214 S. W. 737, upheld the constitutionality of the Woman's Suffrage Law adopted by that state in 1919 against a similar constitutional attack.

The Supreme Court of Utah on April 2, 1915, in the case of *Salt Lake City v. Wilson*, 46 Utah 60, 148 Pac. 1104, upheld a two-dollar poll tax levy upon "every man over 21 and under 50 years of age, not physically incapacitated to work and not exempted by law," against a constitutional attack based upon a provision of the State Constitution making unlawful discrimination between the sexes, which is much broader and more restrictive than the Nineteenth Amendment, the language of Article IV, Section 1 of the Constitution of the State of Utah being at that time as follows:

"The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall enjoy equally all civil, political and religious rights and privileges."

It is the general law that

"the right of suffrage being merely a franchise or privilege, the state may, by its constitution or by statute, if the power of the legislature is not limited in this respect by the Constitution, confer the right only upon those who contribute to the support of the government by the payment of taxes."

Elections, Section 37, 20 C. J., page 75.

The privilege of the states in this regard is expressed by Ruling Case Law in the following language:

"A qualification of the right to vote frequently found in constitutions is that the voter shall have paid a tax prior to the election at which he offers to vote. There is no question but that contributing to the support of the government may be made a condition of the privilege of voting. This idea was early prevalent in our scheme of government, and only those who paid taxes could vote; that is, only those who helped to support the government. Those who had real estate or other property were rated upon it, and such as had not were assessed upon the poll. It has been held that a requirement that only those could vote who had real estate, or personal property rated at a certain figure, is not met by showing that the voter had an estate ratable at the sum specified. Real estate and other property qualifications have almost entirely been abandoned, but the poll tax is still retained in many states; and it has been held where this requirement obtains, that the payment not only of capitation taxes for the year of the election but all delinquent taxes

may be required as a preliminary to voting'' (9 R. C. L., Elections, Section 56, on page 1040).

Three decisions by the Supreme Court of the United States which have already been cited in this brief involving a construction of the equal protection clause and due process clause of the Fourteenth Amendment are in point here. These clauses of the Fourteenth Amendment confer directly and immediately upon each citizen of the United States substantial constitutional rights.

In the case of *Butler v. Perry,* 240 U. S. 328, 36 S. Ct. 258, 60 L. ed. 672, affirming 67 Florida 405, 66 So. 150, it was claimed that a sentence of thirty days in jail after conviction upon a charge of failing to work on a road under a statute which provided an alternative poll tax of three dollars imposed involuntarily servitude as a punishment for crime, contrary to the Thirteenth Amendment, and also that the enforcement of this alternative road poll tax law deprived the appellant of his liberty and property without due process of law in violation of the Fourteenth Amendment.

The statute challenged in the Butler case required:

> ''Every able-bodied male person over the age of twenty-one years, and under the age of forty-five years residing in said county for thirty days or more continuously next prior to'' a certain date to work on the roads and bridges of the several counties for six days or not less than ten hours each in each year when summoned so to do, or to provide an able-bodied substitute or, in lieu thereof to pay a poll tax of Three Dollars.

Williams v. Mississippi, 170 U. S. 213, 42 L. ed. 1012, 18 S. Ct. 583, was a motion to quash an indictment on ac-

count of the alleged incidental effect of the laws of the State of Mississippi prescribing qualifications for voters upon the laws of the state prescribing the qualifications for jurors.

The clause of the Federal Constitution relied on in the Williams case (the equal protection clause of the Fourteenth Amendment) operated directly in conferring upon the defendant a substantial federal right and it was conceded by the Supreme Court of the United States that "within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedience to obstruct the exercise of suffrage by the negro race." (See Opinion, 170 U. S. 222.)

The Supreme Court refused to give relief, however, saying in the opinion that "it cannot be said * * * that the denial of the equal protection of the laws *arises primarily* from the Constitution and Laws of Mississippi."

The due process clause of the Fourteenth Amendment is another clause of the Federal Constitution which operates directly to confer a right upon the citizen. Infringement of this right was claimed in the case of *Rawlins v. Georgia,* 201 U. S. 638, 50 L. Ed. 899, 26 S. Ct. 560, in which the plaintiffs in error challenged the array of the grand jury because of the provisions of the Georgia laws exempting from grand jury service lawyers, preachers, ministers, doctors, engineers and firemen of railroad trains and dentists.

XII.

AUTHORITY OF THE MASSACHUSETTS WOMAN-JUROR CASE.

As pointed out in the analysis, the attack made on the constitutionality of the General Tax Act of the State of Georgia resolves itself into one of two possible contentions with respect to the effect of the Nineteenth Amendment to the Federal Constitution upon the General Tax Act in force at the time the Nineteenth Amendment was ratified, and upon subsequent General Tax Acts which have been adopted in substantially the same form since that date, beginning with the General Tax Act approved at the extraordinary session of the Legislature December 19, 1923 (Georgia Laws extraordinary session 1923, p. 20). These two alternatives are the following:

(1) A claim that the Nineteenth Amendment to the Federal Constitution automatically wrote into the General Tax Act of the State of Georgia an extension of this tax to include all female citizens.

(2) A claim that upon the adoption of the Nineteenth Amendment to the Federal Constitution Georgia's age-old poll tax levy authorized by the Constitution of the state and re-enacted in substantially the same form for a period of approximately 150 years immediately became void.

That the second alternative is not true was determined by the Supreme Court of Georgia in the case of *Davis v. Warde,* 155 Ga. 748, 118 S. E. 378, see opinion of Supreme Court of Georgia, beginning last paragraph 155 Ga., p. 782, 118 S. E., p. 394. This construction by the Supreme Court of Georgia upon its own law will be accepted by the United States Supreme Court.

The first alternative is substantially the same claim which was made with respect to an automatic extension of General Laws, Chapter 234, Section 1, of the State of Massachusetts, in the case of *Commonwealth v. Welosky* (Sup. Judicial Ct. of Mass., September 10, 1931), 276 Mass. 398, 177 N. E. 656 (certiorari denied 284 U. S. 684, 76 L. ed. 578, 52 S. Ct. 201).

This law of the State of Massachusetts defined those subject to jury service in the following language:

> "A person qualified to vote for representatives to the general court shall be liable to serve as a juror."

It was contended that upon the ratification of the Nineteenth Amendment to the Federal Constitution the words in this General Law, "a person qualified to vote for representatives to the general court," necessarily included female voters who had been enfranchised by the constitutional amendment, and that the constitutional rights of the defendant arising directly under the Fourteenth Amendment to the Constitution of the United States had been violated.

The state statute in question defining persons liable for jury service had been enacted on December 22, 1920 (about four months subsequent to the ratification of the Nineteenth Amendment), and the language was substantially the same as that employed in previous statutes in the State of Massachusetts defining those eligible for jury service.

With respect to the Nineteenth Amendment and the indirect right claimed to have been conferred by the defendant, the Supreme Court of Massachusetts said:

> "The Nineteenth Amendment * * * conferred the

> suffrage upon an entirely new class of human beings. It did not extend the right to vote to members of an existing classification theretofore disqualified, but created a new class. * * * No member of the class thus added to the list of voters had ever theretofore in this commonwealth had the right to vote for candidates for offices created by the Constitution. The change in the legal status of women wrought by the Nineteenth Amendment was radical, drastic and unprecedented. While it is to be given full effect in its field, it is not to be extended by implication."

In denying that the Nineteenth Amendment had added to the newly enfranchised women voters of Massachusetts the burden of jury duty, the Supreme Judicial Court said:

> "In many respects, laws especially protective to women on account of their sex had been enacted. Most of those formerly imposing limitations even upon married women with respect to property and business had disappeared. Those were not changed by the Nineteenth Amendment. Current discussion touching the adoption of the Nineteenth Amendment related exclusively to the franchise. The words of that amendment by express terms deal solely with the right to vote."

As authority for its decision, the Supreme Court of Massachusetts cited the case of *Minor v. Happersett,* 21 Wall. 162, 22 L. ed. 627, and a group of decisions by the Supreme Court of the United States which have uniformly upheld the laws of various states providing a separate classification of female citizens with respect to burdens imposed by industry.

These cases with respect to the constitutionality of laws upholding a separate classification of women when the

contract clause of the Fourteenth Amendment is directly involved include the following:

Muller v. Oregon, 208 U. S. 412, 28 S. Ct. 324, 52 L. ed. 551, 13 Ann. Cas. 957;
Riley v. Massachusetts, 232 U. S. 671, 34 S. Ct. 469, 58 L. ed. 788;
Miller v. Wilson, 236 U. S. 373, 35 S. Ct. 342, 59 L. ed. 628, L. R. A. 1915 F 829.

XIII.

THE SEPARATE CLASSIFICATION OF CITIZENS ABOVE THE AGE OF SIXTY YEARS IS NOT UNLAWFUL.

Attention is called to the fact that no clause of the Federal Constitution is cited which is alleged to forbid directly the separate classification of citizens above the age of sixty years, or their exemptions from liability for poll taxes.

Among the various states whose requirements for registration are analyzed in the case of *Minor v. Happersett,* 88 U. S. (21 Wall.), on pages 172 and 173, Georgia alone, with the possible exception of Pennsylvania, required the payment only of a poll tax, and all of the various states' laws requiring payment of taxes of some character as a prerequisite for voting were there approved as being within the authority of the respective states.

Authorities already cited in section VII of this brief are conclusive upon the question regarding the right to classify with respect to age. Appellee will only add thereto the language of the Supreme Court of Washington in the very well-considered case of *Thurston County v. Tenino Stone*

Quarries, 44 Wash. 351, 87 Pac. 634, 12 Ann. Cas. 314, 9 L. R. A. (N. S.) 306, as follows:

> "Respondent suggests this question: 'Why should a man forty-nine years of age, living upon his farm by the side of a certain road, be compelled to pay a poll tax, while his brother, fifty-one years of age, with equally good health and strength, living upon an adjoining farm of like character and equal value, by the side of the same highway, not be subjected to such exactment?' The answer is simply this: Under such a law the older brother would have been subject to the tax for two years before the younger became of age. The latter will be exempt when he shall have completed the period through which the other has passed. The character and value of the property of each has no bearing upon the question. The underlying nature and purpose of a poll tax are disassociated entirely from any consideration of property.
>
> "That the average man between the ages of twenty-one and fifty is physically able readily to earn and contribute the amount of this tax must be conceded. That the average person in any of these classes composed, respectively, of women, males under twenty-one, and males over fifty, is by nature far less able physically to do work or earn money, is self-evident. These distinctions, based upon the laws of nature, are such as the legislature was abundantly justified in recognizing."

CONCLUSION.

Appellee respectfully calls the attention of the Court to the fact that a substantial portion of the educational fund of the State of Georgia, amounting to several hundred thousand dollars per year, has been derived ever since the adoption of the Constitution of 1868 from the poll tax levy. Both by the Constitution of 1868 and by the Constitution

of 1877, which is the present Constitution of this state, all revenue from poll taxes is allocated to be used only for educational purposes.

As has been pointed out by abundant analyses in this brief, the appellant files this suit and prosecutes this appeal and complains only of that which is the result of his own default in failing to pay from year to year the very small sum of one dollar ($1.00) per year which the sovereign State of Georgia has seen fit to require of its citizens as a prerequisite to registration for voting.

Under these circumstances, appellee respectfully insists that the appellant does not come into court under circumstances which would make it equitable to grant a mandamus for which he prays, and appellant does not now prosecute this appeal with clean hands.

United States v. Fisher, 222 U. S. 204, 32 S. Ct. 37, 56 L. ed. 165.

Respectfully submitted,

CHAS. B. SHELTON,
504 First National Bank Bldg.,
RALPH H. PHARR,
504 First National Bank Bldg.,
E. HAROLD SHEATS,
219 Hurt Building,
W. S. NORTHCUTT,
504 First National Bank Bldg.,
Attorneys at Law for Appellee.

Atlanta, Georgia,
October 1, 1937.

APPENDIX.

CONSTITUTIONAL REQUIREMENTS OF THE VARIOUS CONSTITUTIONS OF THE STATE OF GEORGIA AND LAWS PASSED BY THE GENERAL ASSEMBLY FROM TIME TO TIME RELATING TO THE QUALIFICATION OF VOTERS, THE AMOUNT OF POLL TAXES ASSESSED, AND CLASSIFICATIONS OF CITIZENS WITH RESPECT TO LIABILITY FOR POLL TAX.

The Constitution of the State of Georgia of 1789, Article IV, Section I, prescribed the qualifications of electors of the members of both branches of the General Assembly and prescribed that they should be

> "citizens and inhabitants of this State, and shall have attained to the age of 21 years, and have paid tax for the year preceding the election, and shall have resided six months within the county."
>
> See *McElreath on the Constitution of Georgia*, page 247, Section 336.

The Constitution of the State of Georgia of 1798, Article IV, Section I, prescribed the qualifications of electors of members of the General Assembly and required that they should be

> "citizens and inhabitants of this State, and shall have attained the age of 21 years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided six months within the county: Provided, that in case of invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the

voters of such county, may meet under the direction of any three justices of the peace thereof, in the nearest county, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors; and the persons elected thereat shall be entitled to their seats."

T. R. R. Cobb's New Digest of Laws of Georgia, page 1124;

McElreath on the Constitution of Georgia, page 264, Section 402;

Digest of the Laws of the State of Georgia (1837) *by Oliver Prince,* page 911.

On December 12, 1804, the Legislature of Georgia enacted an act entitled

"An Act to Raise a Tax for the Support of Government for the Year 1805,"

a portion of section 2 thereof relating to poll taxes being in the following language:

"The sum of thirty-one and a quarter cents shall be levied on all free male white persons of the age of 21 years and upwards in this State * * * provided, nevertheless, that in all cases of extreme indigence or infirmity, the inferior court of each county shall be and they are hereby authorized to remit the poll tax upon such indigent or infirm person claiming the same."

See *Digest of the Laws of the State of Georgia* (1837) *by Oliver Prince,* pages 842, 843;

T. R. R. Cobb's New Digest Laws of Georgia, page 1044;

Cobb's Analysis and Forms (1846), pages 674 and 675.

This act classified citizens with respect to liability for poll taxes by providing that poll taxes should be levied

only on "free male white persons of the age of 21 years and upwards" and authorized "the inferior court of each county * * * to remit the poll tax upon such indigent or infirm person claiming the same." This classification with respect to indigent or infirm persons was the first classification provided by law in Georgia with respect to citizens otherwise generally liable for the payment of poll taxes.

The General Tax Act for the year 1826 provided a new classification of male citizens not subject to payment of poll tax by reason of age in the following language:

> "From and after the passage of this Act, all free male white persons of 60 years of age and upwards shall be, and they are hereby exempted from paying poll tax."
>
> *Georgia Laws 1825,* page 171;
> *T. R. R. Cobb's New Digest Laws of Georgia,* page 1066;
> *"Laws of Georgia of force 1820-1829,"* by Arthur Foster, page 333;
> *Digest of the Laws of the State of Georgia* (1837), *by Oliver H. Prince,* page 862.

The same classification was provided by an act approved by the Georgia Legislature December 23, 1842, in the following language:

> "That from and immediately after the passage of this Act, that all free white male persons of the age of sixty years and upwards, shall be exempt from paying poll tax throughout this State; any law, usage or custom to the contrary notwithstanding."
>
> *Georgia Laws 1842,* page 171;
> *T. R. R. Cobb's New Digest Laws of Georgia,* page 1074.

By the Act approved February 22, 1850, the annual poll tax was fixed at twenty-five cents by Section 2 of this Act in the following language:

> "Each and every male citizen between the ages of twenty-one and sixty, be taxed annually the sum of twenty-five cents only."
>
> *Georgia Laws 1849-50*, page 376;
> *T. R. R. Cobb's New Digest Laws of Georgia*, page 1080.

The Constitution of the State of Georgia of 1861, Article V, Section I, prescribed that the electors of members of the General Assembly

> "shall be free white male citizens of this State; and shall have attained the age of twenty-one years; and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election; and shall have resided six months within the district or county."
>
> *McElreath on the Constitution of Georgia*, page 296, Section 542.

The Constitution of the State of Georgia of 1865, Article V, Section I, prescribed that the electors of members of the General Assembly shall be

> "free white male citizens of this state, and shall have attained the age of twenty-one years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying agreeably to law, for the year preceding the election, shall be citizens of the United States, and shall have resided six months either in the district or county, and two years within this state, and no person not qualified to

vote for members of the General Assembly shall hold any office in this state."

McElreath on the Constitution of Georgia, page 315, Section 639;
Irwin's Code, Section 4980.

The General Tax Act approved March 3, 1866, was the first to provide a poll tax in the amount of one dollar in the following language:

"In addition to the ad valorem tax on real and personal property, as specified in the Code, and assessed in the preceding section, the following specific taxes shall be levied and collected:

"1. A tax of one dollar upon each and every male inhabitant of this state on the first day of April, between the ages of twenty-one and sixty years."

Georgia Laws 1865-66, page 253.

The first constitutional requirement of the State of Georgia relating solely to poll taxes was contained in Article I, Section 29, of the Constitution of 1868, as follows:

"No poll tax shall be levied except for educational purposes, and such tax shall not exceed one dollar annually on each poll."

McElreath on the Constitution of Georgia, page 321, Section 678;
Code (1873), Section 5021.

The Constitution of 1868, Article II, Section II, prescribed anew the qualifications of electors, as follows:

"Every male person born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old or upward,

who shall have resided in this state six months next preceding the election, and shall have resided thirty days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year preceding the election (except as hereinafter provided), shall be deemed an elector; and every male citizen of the United States, of the age aforesaid (except as hereinafter provided), who may be a resident of the state at the time of the adoption of this Constitution, shall be deemed an elector, and shall have all the rights of an elector, as aforesaid: Provided, that no soldier, sailor, or marine in the military or naval service of the United States shall acquire the rights of an elector by reason of being stationed on duty in this state; and no person shall vote who, if challenged, shall refuse to take the following oath: 'I do swear that I have not given or received, nor do I expect to give or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected at this election, nor have I given or promised any reward, or made any threat, by which to prevent any person from voting at this election.' "

McElreath on the Constitution of Georgia, page 322, Section 684;

Code of Georgia (1873), Section 5027.

The third classification prescribed by legal authority in the State of Georgia with respect to poll taxes was by virtue of the act approved March 18, 1869, relating to blind persons having in their own right taxable property not exceeding in value five hundred dollars, which was in the following language:

"Be it enacted, etc. That from and after the passage of this act, all persons blind, and not having in

their own right taxable property not exceeding in value five hundred dollars, shall be exempt from the payment of poll tax."

Georgia Laws 1869, page 162;
Code of Georgia (1873), Section 809 (3);
Code (1882), 809 (3).

This classification with respect to blind persons having in their own right a limited amount of taxable property was changed beginning with the adoption of the General Tax Act for 1887 and 1888, approved December 22, 1886 (Georgia Laws 1886, page 14), so as to make the classification apply to all blind persons, which separate classification with respect to blind persons has remained the law of Georgia to this date.

Code (1911), Section 917;
Park's Code (1914), Vol. I, Section 917;
Michie's Code (1926), Section 993 (4);
Code (1933), Section 92-108.

The act approved October 21, 1870, was designed to carry into effect the Constitutional provision prescribed by Article I, Section 29 of the Constitution of 1868 above quoted, and is as follows:

"Whereas Article I, Section 29 of the Constitution of this State provides that 'no poll tax shall be levied except for educational purposes and such tax shall not exceed one dollar on each poll, which the General Assembly is authorized to assess,' and whereas certain bodies politic, incorporations, and local authorities of this State are in the habit of violating said Constitution by assessing and collecting capitation taxes as registration fees, street tax, etc. * * *

"Be it enacted by the General Assembly of the State of Georgia, that it shall henceforth be unlawful

for any county, city or corporate authority to assess or collect any capitation tax whatever, except street tax and that only after opportunity to work the streets."

Georgia Laws (1870), p. 432;
Code (1873), Section 809;
Code (1882), Section 809 (3);
Code (1895), Vol. 1, Section 775;
Code (1911), Section 1015;
Park's Code (1914), Section 1015;
Michie's Code (1926), Section 1015;
Code (1933), Section 92-109.

The Constitution of the State of Georgia of 1877, which is the present Constitution of this State, Article VII, Section II, Paragraph III, prescribes the limitations with respect to levy of poll taxes as follows:

"No poll tax shall be levied except for educational purposes, and such tax shall not exceed one dollar annually, on each poll."

McElreath on the Constitution of Georgia, p. 384, Section 1005;
Code (1882), 5183;
Code (1896), Vol. II, Section 5885;
Code (1911), Section 6555;
Park's Code, Vol. V, Section 6555;
Michie's Code (1926), Section 6555;
Code (1933), Section 2-5004.

The Constitution of the State of Georgia of 1877, which is the present Constitution of this State, Article II, Section I, Paragraph II, prescribed the qualifications of an elector in the following language:

"Every male citizen of the United States (except as hereinafter provided), twenty-one years of age, who shall have resided in this State one year next preced-

ing the election, and shall have resided six months in the county in which he offers to vote, and shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election, shall be deemed an elector: Provided, that no soldier, sailor or marine in the military or naval service of the United States, shall acquire the rights of an elector by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath, or affirmation:

"'I do swear (or affirm) that I am twenty-one years of age, have resided in this State one year, and in this county six months, next preceding this election. I have paid all taxes which, since the adoption of the present Constitution of this State, have been required of me previous to this year, and which I have had an opportunity to pay, and I have not voted at this election.'"

McElreath on the Constitution of Georgia, p. 356, Section 854;
Code (1882), Section 5032;
Code (1896), Vol II, Section 5737.

On July 23, 1883, the Legislature enacted a law providing a new classification by which crippled and disabled Confederate soldiers were relieved from the payment of poll tax, sections one and two of this act being as follows:

"Be it enacted by the General Assembly of this State, That from and after the passage of this Act, all persons who have lost a limb or limbs, or the use of the same while actually engaged in the military service of the late Confederate States, shall be, and they are hereby relieved from the payment of all poll tax in this State now or hereafter to become due (Section I).

"Be it further enacted, That the several ordinaries, or other officer or officers of the county having the control and management of the county revenues, shall have full power and authority, in their respective counties, to relieve any person from the payment of any poll tax which is demanded in violation of this Act" (Section II).

Georgia Laws (1882-3), pp. 120-121.

This law was codified as Section 766 of Volume I of the Georgia Code of 1895, as follows:

"All persons who have lost a limb or limbs, or the use of the same, while actually engaged in the military service of the late Confederate States, are relieved from the payment of all poll tax in this state."

This separate classification is retained in the proviso of Section 917 of the Code of 1911, also in the proviso of Section 917 of Park's Anno. Code (1914).

This classification is retained in the proviso of Section 993 (4) of Michie's Code of Georgia of 1926 in the following language:

"Provided, this shall not be demanded of blind persons, nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of Section 766, Volume 1 of the Code of 1895, * * *."

This classification has likewise been carried in all of the General Tax Acts approved from year to year to and including the act approved August 25, 1927 (Georgia Laws 1927, pages 56 and 57).

Section I of Article II of the present Constitution, including paragraph II above quoted, was amended after a two-third vote of both houses of the General Assembly of

the State of Georgia (Georgia Laws 1908, page 27) by amendment ratified at a general election of the people held October 7, 1908, by striking the entire section and substituting in lieu thereof a new section prescribing the qualifications of electors and providing for the registration of voters. Paragraphs 2, 3 and 4 of this constitutional amendment defined the qualifications of electors as follows:

> "Par. 2. Every male citizen of this state who is a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people; provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire rights of an elector by reason of being stationed on duty in this state.
>
> "Par. 3. To entitle a person to register and vote at any election by the people, he shall have resided in the state one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes.
>
> "Par. 4. Every male citizen of this state shall be entitled to register as an elector and to vote in all elections in said state who is not disqualified under the provisions of Section 2 of Article II of this Constitution, and who possesses the qualifications prescribed in paragraphs 2 and 3 of this section, or who

will possess them at the date of the election occurring next after his registration, and who, in addition thereto, comes within either of the classes provided for in the five following subdivisions of this paragraph."

Paragraph 3 of this amendment relates to payment of taxes as a prerequisite to registration for voting and is codified as follows:

Code (1911), Section 6397;
Park's Code of 1914 (Vol. V), Section 6397;
Michie's Code of 1926, Section 6397.

This requirement of the present Constitution with respect to payment of taxes was again amended by a second amendment approved by a two-thirds vote of both houses of the General Assembly (Ga. Laws 1931, page 102) and ratified by a vote of the majority of the people at a general election held November 8, 1932, so as to strike from this paragraph the words

"all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877 that he may have had an opportunity of paying agreeably to law,"

and to substitute in lieu thereof the words

"all poll-taxes that he may have had an opportunity of paying agreeably to law."

As thus amended, this section of the present Constitution of the State of Georgia is codified as Section 2-603 of the Georgia Code of 1933.

Prior to the adoption of the Nineteenth Amendment to the Constitution of the United States poll taxes had been required only of male inhabitants, the operative language

in prior years being similar to that incorporated in subparagraph 1 of Section 2 of the General Tax Act, approved August 20, 1918, which was in the following language:

> "Upon each and every male inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation, a poll tax of one ($1.00) dollar, which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this tax shall not be demanded of blind persons nor of crippled, maimed or disabled Confederate soldiers relieved of such taxes under and by authority of Section 766, Vol. 1 of the Code of 1895" (Georgia Laws 1918, page 44).

On August 15, 1921, the Legislature of the State of Georgia passed a General Tax Act operative beginning January 1, 1922, by which the former policy of the State with respect to requiring the payment of poll taxes by male inhabitants was changed so as to levy a poll tax of one dollar upon each and every inhabitant of the State within certain age limits. The applicable language of this General Tax Act is included in subparagraph I of Section II thereof (Ga. Laws 1921, page 39) as follows:

> "Upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the days fixed for the return of property for taxation a poll tax of one ($1.00) dollar which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this tax shall not be demanded of blind persons nor crippled, maimed or disabled Confederate soldiers relieved of such taxes under and by authority of Section 766, Vol. 1 of the Code of 1895."

By act approved August 21, 1922 (Ga. Laws 1922, page 21), the Legislature amended the General Tax Act, which had been adopted in the previous year (Ga. Laws 1921, pages 38 and 39; supra), by providing a separate classification of nonregistered females from payment of poll tax.

Sections I, II, III and IV of this Act, approved August 21, 1922, are as follows:

"Section I. Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by the authority of the same, that the '1st' paragraph of Section two (2) of the above recited Act be and the same is hereby amended in the following manner: By adding after the last words 'Vol. 1 of the Code of 1895 of said '1st' paragraph of said section, the following words, to-wit:

" 'Nor shall this Act be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax due from the time they shall become eligible to vote to the date of their registration,' so that said section after being amended shall read as follows:

"Sec. 2. Upon each and every inhabitant of the State between the ages of twenty-one and sixty years on the day fixed for the return of property for taxation a poll tax of one ($1.00) dollar which shall be for educational purposes in instructing children in the elementary branches of an English education only. Provided this tax shall not be demanded of blind persons nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of section 766, Vol. 1 of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting, provided that all females are required to pay all back poll tax

due from the time they shall become eligible to vote to the date of their registration.

"Sec. 3. Provided, further, that those female inhabitants who have heretofore registered may avail themselves of the benefits of this Act, and be relieved of said tax, by applying to the tax collector of their county, and have their names stricken from said registration book; and it shall be the duty of said tax collector to issue to such females who may apply to have their names so stricken a certificate, which certificate shall bear date when issued and shall give the name of such females, and state in substance that said named female has been stricken from the registration book, and is no longer a registered voter for that year.

"Sec. 4. Provided, further, that those female inhabitants whose names have at any time been stricken from said registration book, or those who have never registered, may register for the purpose of voting, and shall be required to pay a poll tax for the year in which they may so register and shall be required to pay a poll tax for every succeeding year so long as their names remain on said registration book."

The Legislature of the State of Georgia in extraordinary session on December 19, 1923, passed a new General Tax Act, which became operative beginning January 1, 1924 (Ga. Laws, extraordinary session 1923, page 20). Paragraph I of Section II of this General Tax Act related to poll taxes and paragraph I (a) of this act related to the relief of registered female voters. Paragraph I and paragraph 1 (a) of Section II of this General Tax Act (Ga. Laws, extraordinary session 1923, page 21), are as follows:

"Paragraph 1. Upon each and every inhabitant of the State between the ages of twenty-one and sixty years, on the day fixed for the return of property for

taxation, a poll tax of one ($1.00) dollar, which shall be for educational purposes, in instructing children in the elementary branches of an English education only. Provided, this shall not be demanded of blind persons, nor crippled, maimed or disabled Confederate veterans relieved of such taxes under and by authority of Section 766, Volume 1, of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting.

"(a) Provided further, That those female inhabitants who have heretofore registered may avail themselves of the benefits of this Act and be relieved of said tax, by applying to the tax collector of their county, and have their names stricken from said registration book; and it shall be the duty of said tax collector to issue to such females who may apply to have their names so stricken a certificate, which certificate shall bear date when issued and shall give the name of such females, and state in substance that said named female has been stricken from the registration book, and is no longer a registered voter for that year."

The General Tax Act approved 1923, above quoted, remained in effect until January 1, 1928, on which date the General Tax Act approved August 25, 1927 (Ga. Laws 1927, page 56) became operative. Paragraph 1 of Section 2 of this General Tax Act, approved August 25, 1927 (Ga. Laws 1927, page 57), related to payment of poll taxes and is as follows:

"Upon each and every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation a poll tax of $1.00 which shall be for educational purposes in instructing children in the elementary branches of an English education only. Provided, this shall not be

demanded of blind persons, nor crippled, maimed, or disabled Confederate veterans relieved of such taxes under and by authority of section 766, volume 1, of the Code of 1895, nor shall this tax be required or demanded of female inhabitants of the State who do not register for voting."

This paragraph of the Act approved August 25, 1927, is incorporated as 92-108 of the Georgia Code of 1933.

The General Tax Act approved August 25, 1927, above quoted, continued in force until January 1, 1936, on which date the General Tax Act approved March 28, 1935, (Ga. Laws 1935, page 11), became effective. Paragraph 1 of Section 2 of this General Tax Act approved March 28, 1935 (Ga. Laws 1935, page 12), relates to payment of poll taxes and is as follows:

"There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00 which shall be used for educational purposes in instructing children in the elementary branches of an English education only; Provided, that this tax shall not be demanded of blind persons, or female inhabitants of the State who do not register for voting."

Section 92-6601 of the Georgia Code of 1933 is as follows:

"If a person fails to make a return, in whole or in part, or fails to affix a value to his property, the receiver shall make the valuation and assess the tax thereon, and in all other respects make the return for the defaulting person from the best information he can obtain, and he shall double the tax in the last column of the digest against such defaulter, after

having placed the proper market value or specific return in the proper column; and for every year's default the defaulter shall be taxed double until a return is made."

Section 92-5001 of the Georgia Code of 1933 is as follows:

"All taxes due the State or any county thereof remaining unpaid on December 20th in each year shall bear interest at the rate of seven per cent, per annum from said date, and the several tax collectors shall collect the interest on such unpaid taxes and account for same in their final settlements."

PLEADINGS MATERIAL TO A CONSIDERATION OF THE ISSUES PRESENTED.

The Petition.

(References by number are to correspondingly numbered paragraphs.)

Petitioner alleges:

(3) That on March 16, 1936, he went to the office of defendant, Tax Collector, for the purpose of registering to vote in primaries and general election to be held during the year 1936 for the election of members of both houses of Congress of the United States, Governor of Georgia and members of the General Assembly.

(4) That he made application to have the voters' oath administered to him without any reference being made to the payment of poll tax because he had not paid any poll tax since he became 21 years of age, whereupon the clerk in charge of the registration book refused to comply with his demand, giving as his reason for such refusal that the only oath which the clerk was authorized to administer was the regular form of voters' oath required of all persons desiring to register, copy attached as "Exhibit A." The form of voters' oath alleged to have been required appears on pages 13 and 14 of the transcript, folio 17. That the clerk declined to administer to him the voters' oath described unless petitioner had paid all past-due taxes assessed against him which said clerk stated was in the approximate amount of thirteen dollars and fifty cents ($13.50).

(5) That he presented to defendant Suttles, Tax Col-

lector of Fulton County, a formal demand in writing that he be administered the voters' oath with no reference therein to the payment of poll tax and that he be allowed to register, copy of his formal demand being attached as "Exhibit B."

The formal demand signed by the petitioner and directed to the defendant Suttles, as Tax Collector of Fulton County, attached as "Exhibit B," appears on pages 14, 15 and 16 of the transcript, folios 18, 19 and 20, and contains the following statements:

> "I have been a bona fide resident of Fulton County, Georgia, for more than seven years. I have neither made a poll tax return to the Tax Collector or any other tax officer of this County or State during said period, nor have I paid any poll taxes to the County or State, nor have I registered to vote by reason of the fact that a poll tax receipt showing that my poll taxes for a period of seven years have been paid and also an oath that I have paid the same are required as prerequisites to registration.
>
> "I am a white male citizen, 28 years of age, and have complied with and am qualified to register and vote under all the laws of the State of Georgia except that provision of our laws which requires the payment of a poll tax and that I give an oath 'that I have paid all poll taxes which I have had an opportunity of paying agreeable to the law'; * * *."

The above language is followed by a formal demand to administer to petitioner a form of oath of petitioner's own construction, which form of oath omits from the form of oath prescribed by Section 34-103 of the Georgia Code of 1933 the words in the sixth to the ninth lines thereof as follows:

> "* * * that I have paid all poll taxes which I have

had an opportunity of paying agreeably to law; that I possess the qualification of an elector required by the Constitution."

Said form offered to be subscribed by the applicant nowhere contained any language which incorporated a statement equivalent to either of the two requirements quoted from said Section 34-103 of the Georgia Code of 1933.

(6) That defendant Tax Collector refused to comply with his formal demand and then and there confirmed said verbal refusal by denying the request and demand of petitioner in writing, a copy of said reply being attached as "Exhibit C," which exhibit appears on page 16 of the transcript, fol. 21.

(7) That defendant Tax Collector refused * * * to allow him to register upon the ground that petitioner had not paid poll taxes for the past seven years in the approximate amount of $13.50 as required under Article II, Section 1, paragraph 3 of the Constitution of Georgia, as amended, which paragraph of the Constitution is the same as Section 2-603 of the Code of Georgia of 1933. This paragraph as quoted in the petition omits the constitutional requirement as to length of residence in the county.

(8) That defendant Tax Collector refused to administer the voters' oath to petitioner and refused to allow him to vote upon the further ground that petitioner had not paid poll tax for the past seven years as required under Sections 34-103, 34-113, 34-114 and 92-158 of the Code of Georgia of 1933, quoted with slight error in the paragraph.

(In the parentheses following Sections 34-103, 34-113 and 34-114, as quoted, the reference to "Const. * * * Article II, Section I, paragraph II," is error and should read: "Article II, Section I, paragraph III.")

References in Petition to Clauses of the Federal Constitution Relied on.

(Paragraphs 9 to 16, inclusive.)

So much of Article II, Section I, paragraph III of the Constitution of Georgia (Section 2-603, Code of 1933) and of Sections 34-103, 34-113, 34-114 and 92-108 of the Georgia Code of 1933, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in the State of Georgia to register and vote for the candidates named, are alleged in general terms only to be in conflict with portions of the Constitution of the United States, which clauses of the Constitution of the United States are designated by Article, section and Paragraph, and quoted in the petition *without any statement of reason* for the alleged unconstitutionality in the respective paragraphs, as follows:

Paragraph of Petition.	Section of Federal Constitution Relied On.
(9)	Preamble.
(10)	Power of Congress to lay and collect taxes. Article I, Section 8, Paragraph 1.
(11) Transcript shows II	Power of Congress to levy Capitation tax. Article I, Section 9, Paragraph 4.
(12)	Relative rights and privileges of citizens of States. Article IV, Section 2, Paragraph 1.

(13)	Constitutional Declaration of Supreme Law, Article VI, Paragraph 2 (Section 2).
(14)	Fourteenth Amendment (General). (Designated in Petition as Article XIV, Section 1.)
(15)	Discrimination clause of 15th Amendment. (Designated in Petition as Article XV, Section 1.)
(16)	Discrimination clause of 19th Amendment. (Designated in Petition as Article XIX, Section 1.)

Other paragraphs of the petition appropriate for consideration in an analysis of the legal propositions involved are:

Paragraph 25 alleging:

> "Said poll tax laws of Georgia, not being uniform throughout the States of the Union, deprive the citizens of the United States residing in Georgia of the privileges and immunities enjoyed by the citizens of the several other States in the exercise of their inherent right of franchise to vote for persons elected and to be elected to administer the affairs of our National Government."

Paragraph 26 alleging:

> Section 92-108 of the Code of Georgia (quoted in paragraph 8 of the petition) "exempting persons above the age of sixty from the payment of said tax and granting privileges to the female inhabitants not enjoyed by the male residents between the ages of 21 and 60" is alleged to be

"discriminatory and denies to petitioner the equal protection of the laws within the jurisdiction of this State and guaranteed by the Constitution of the United States."

By paragraph 1 of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31), paragraph 26 was amended to read as follows:

"'That section 92-108 of the Code of Georgia, enacted in pursuance of said poll tax provisions in the Constitution of this State, arbitrarily exempting persons above the age of sixty from the payment of said tax and granting special privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is arbitrary and unreasonable and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States.'"

Paragraphs 29 and 30 contain the only intimation in the petition as to inability to pay the tax in the language:

Paragraph 29:

"By reason of petitioner's inability and failure to pay said poll taxes required under the laws of this State as set out above, he has been denied the right to register and vote by defendant Tax Collector."

Paragraph 30:

"He is without property and dependent upon his labor for sustenance and does not have the right under the present system and his poverty stricken condition to fix the amount of his earnings."

Paragraph 17 is omitted because it is confined to an

alleged conflict with the State Constitution and the alleged objection is not preserved in appellant's statement of points to be relied on in the Supreme Court.

Paragraphs 18, 19, 20, 21, 22, 23 and 24, and paragraphs 27, 28, 32 and 33, are each omitted because containing matter not considered material to the federal questions raised, and being appropriate only for consideration by a lawmaking body.

Paragraph 31 is a conclusion of the pleader and, with the exception of the question of jurisdiction reserved for the hearing, not material here.

More References in Petition to Clauses of the Federal Constitution Relied on.

Paragraph 34, subsections (a) through (f), are even more general repetitions of constitutional questions referred to in paragraphs 9 to 14, inclusive, of the petition.

Paragraph 34 (g) is a repetition of paragraph 15, with the only statement in the original petition as to the reason assigned for alleged conflict with the Discrimination Clause in the Fifteenth Amendment, in the following language:

> "For that by reason of facts hereinabove alleged, petitioner has been and is still in a virtual condition of servitude and poverty and being thereby unable to pay said taxes, has been deprived of the inherent right to vote."

Paragraph 34 (h), (j) and (k) of the petition challenges the Georgia laws quoted for the alleged reasons:

Paragraph 34 (h):

"they grant special privileges to female inhabitants

of this State with respect to said taxes which are denied to petitioner,'' was amended by the second paragraph of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31), so as to strike the language of the original paragraph last quoted and to substitute in lieu thereof a challenge of the quoted laws upon the following ground:

> '' 'They grant special privileges to female inhabitants of this State with respect to said taxes which are arbitrarily and unreasonably denied to petitioner.' ''

Paragraph 34 (j):

''they are discrimnatory for that they exempt persons above the age of 60, etc.,'' was amended by the third paragraph of plaintiff's second amendment filed May 6, 1936 (Transcript p. 24, fol. 31 and 32), so as to strike the language of the original paragraph last quoted and to substitute in lieu thereof a challenge of the quoted laws upon the following ground:

> '' 'They arbitrarily and unreasonably discriminate against petitioner for that they exempt persons above the age of sixty and require the payment of said tax by petitioner and other persons similarly situated.' ''

Paragraph 34 (k):

> ''The method of collecting said taxes is through the process of prohibition, injunction and restriction against the right of petitioner to register and vote in the elections above mentioned.''

Paragraph 34 (i) is omitted because it relates to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

FIRST AMENDMENT.

(Transcript pp. 20-23, fol. 25-29.)

(1) New paragraph 36:

The Georgia Constitution and laws are challenged on the ground that they are in conflict with that part of Article IV, Section 4, of the Constitution of the United States guaranteeing to each State a Republican Form of Government,

> "for that said laws * * * restrict the voting privileges * * * to eight per cent of the population, the effect of which is to maintain an autocratic rather than a republican or democratic form of government * * *."

(2) New paragraph 37:

That the Georgia laws are in conflict with the Supreme Law of the land which defines the word "Liberty" contained in the Fourteenth Amendment to the Constitution of the United States as not only embracing the right of a person to be free from physical restraint but the right to be free in the enjoyment of all his faculties as well, and

> "by reason of plaintiff's inability to pay said poll tax * * * petitioner is deprived of and denied the free enjoyment of all their faculties pertaining to the exercise of their choice in the election of the members of Congress and the President * * *."

(3) New paragraph 38:

That the right asserted * * * "being one of those 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions' is embodied in the concept 'due process of law' in the

Fourteenth Amendment * * * and said right of franchise unrestricted by a 'head, capitation or direct tax' is protected under the 'due process of law' and other provisions of the Constitution of the United States herein cited * * *."

(4) New paragraph 39:

That as only 8 per cent of Georgia's population voted in 1932 while an average of 39 per cent voted in states not requiring the payment of a poll tax as a prerequisite to voting, said Georgia laws curtail and restrict electors of their right to vote in said national elections.

(5) New paragraph 40:

Said Article II, Section I, Paragraph 3, of the Constitution of Georgia (Section 2-603, Code of 1933), and said laws are void for that they are in conflict with * * * the First Amendment to the Constitution of the United States * * * for that * * * they (the grounds of objection are asserted in this paragraph, but the following analysis is believed to comprehend all and omit duplication. Letters shown at beginning of paragraphs do not appear in record).

(a) restrict and prohibit the free exercise of petitioner's right of conscience to express his opinion as to who shall be elected * * *; the right to vote is the most sacred and important petition to the government for redress of grievances that could possibly exist;

(b) grievances against the government arise through the people's representatives, * * * and to be denied the right to cast a ballot in protest * * * is to abridge and prohibit the free exercise of the right to petition;

(c) that to otherwise petition the government would be ineffectual;

(d) that under our present system of voting in Georgia our representatives in Congress and the President * * * are responsible to only eight per cent of the people of Georgia;

(e) that said Georgia laws make no provision for exempting paupers unable to pay said tax; that because petitioner is unable to pay the same * * * he is denied "due process of law" guaranteed under the Fourteenth Amendment.

(6) New paragraph 41:

This paragraph is omitted because it relates to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

SECOND AMENDMENT.

(Transcript pp. 24-26, fols. 31-34.)

The first three paragraphs of the second amendment amend certain paragraphs of the petition and have already been incorporated in statement of the petition.

(4) Amends paragraph 41, which is omitted because it related only to an alleged conflict with the State Constitution and the right to maintain the challenge here, if available, has not been preserved.

(5) New paragraph 42, which complains only of an alleged conflict with the State Constitution and with other portions of the state law, and the right to maintain the challenge here, if available, has not been preserved.

ASSIGNMENTS OF ERROR IN THE PETITION TO THE SUPREME COURT OF GEORGIA FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

(Transcript pp. 38-40, fols. 55-57.)

No. of Assignment of Error.	Clauses in Federal Constitution Relied on.
(3)	Article XIV, Section 1 (Fourteenth Amendment)? Due Process Clause.
(4)	Article XIV, Section 1 (Fourteenth Amendment)? Equal Protection Clause.
(5)	Article XIV, Section 1 (Fourteenth Amendment)? Privileges and Immunities Clause.
(6)	Article IV, Section 4. Constitutional Guarantee of Republican Form of Government.
(7)	Article XIX, Section 1 (Nineteenth Amendment). Denial or Abridgement of Right to Vote on Account of Sex.

STATEMENT OF POINTS TO BE RELIED ON IN THE SUPREME COURT.

(Transcript pp. 43-45, fol. 88-91, omitting duplication.)

(Numbers refer to paragraphs which are not numbered in record.)

(1) Judgment alleged error "in that it held constitutional a tax imposing penalties of $13.50 upon appellant, which he is unable to pay * * * as a prerequisite to voting * * * from the payment of which persons above sixty, are arbitrarily exempt and from the payment of which female inhabitants are arbitrarily exempt until they register to vote, whereas the assessment runs against appellant * * * from year to year * * * said exemptions and discriminations being arbitrary, capricious and unreasonable, having no relationship to the public health, morals or general welfare or any other matter within the so-called police power."

(2) The effect of the sustained provisions of the Georgia Constitution and statutes was to restrict the vote in the State of Georgia in the national elections of 1932 to 8 per cent of the population, while an average of 39 per cent of the total population cast their ballots in the same elections in the thirty-nine states which do not require the payment of a poll tax.

Thus the appellant and others similarly situated have been deprived of the enjoyment of the privilege of the elective franchise, inconsistently with those fundamental principles of liberty and justice which lie at the base of our civil and political institutions. The privilege of voting for federal officials is one to which the appellant is

entitled, unhampered and unrestricted by a capitation or other direct tax arbitrarily imposed through hostile state invasions of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the President and the Vice-President of the United States and of Senators and Representatives in Congress and no state may exercise its taxing power so as to destroy this privilege.

Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a state has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the Preamble to the United States Constitution.

(3) The manner of levying and collecting the Georgia poll tax opens its purpose to suspicion, since it is not collected through levy and pursuit as are taxes intended for revenue purposes, but, rather, through the process of restriction and prior restraint on the right to vote.

(4) The equal protection clause of the Fourteenth Amendment. "Persons above sixty may register without paying any poll tax and female inhabitants may do so without paying the tax except for years in which they actually register, whereas the tax is assessed cumulatively against appellant, even as to the years in which he made no attempt to register. The classification is wholly unreasonable."

By the remaining paragraphs the judgment is alleged to be erroneous because contrary to the following portions of the Constitution of the United States:

(5) The Due Process Clause of the Fourteenth Amendment.

(6) The Privileges and Immunities Clause of the Fourteenth Amendment.

(7) The Nineteenth Amendment. "* * * said Georgia Laws * * * arbitrarily, capriciously and unreasonably abridge the right of appellant to vote by reason of sex by requiring him to pay $13.50, whereas a woman similarly situated would be exempt from the payment thereof, * * *."

(8) Article IV, Section 4, of the Constitution of the United States, which guarantees to every state a republican form of government. "* * * said Georgia Laws * * * deprive appellant and the remaining citizens of the United States residing in Georgia, who are otherwise qualified to vote but unable to pay the poll tax, of the right to vote, and * * * have established and maintained an oligarchic and autocratic rather than a republican form of government by reason of the facts recited above, * * * the Supreme Court of the United States having construed said constitutional guarantee to be an inherent and inalienable right of the people of the United States as citizens thereof."

Reserving the right to object to the sufficiency of the pleadings to raise any substantial federal question, a careful analysis of the petition and the amendments and of the order of the Court, which was the equivalent of a dismissal of the mandamus proceedings on general demurrer, will show that the various paragraphs of the petition and assignments of error and of appellant's statement of points to be relied on fall into the following groups:

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
Preamble.	Petition Paragraph 9, Transcript pp. 3, 4, fol. 4. Petition Paragraph 34 (a), Transcript p. 11, fol. 14.
Article I, Section 8, Paragraph 1. Power of Congress to lay and collect taxes.	Petition Paragraph 10, Transcript 4, fol. 5: Petition Paragraph 34 (b), Transcript p. 11, fol. 14.
Article I, Section 9, Paragraph 4. Power of Congress to lay capitation tax.	Petition Paragraph 11, Transcript p. 4, fol. 5. Petition Paragraph 34 (c), Transcript p. 11, fol. 14.
Article IV, Section 2, Paragraph 1. Relative rights and privileges of citizens of State.	Petition Paragraph 12, Transcript pp. 4-5, fol. 5-6. Petition Paragraph 25, Transcript p. 8, fol. 10. Petition Paragraph 34 (d), Transcript p. 12, fol. 14-15.
Article VI, Paragraph 2. Constitutional Declaration of Supreme Law.	Petition Paragraph 13, Transcript p. 5, fol. 6. Petition Paragraph 34 (e), Transcript p. 12, fol. 15.
Article IV, Section 4. Guaranty of Republican Form of Government.	First Amendment Paragraph 1, Adding New Paragraph 36, Transcript p. 20, fol. 25. Sixth Assignment of Error, Transcript pp. 39-40, fol. 56. Statement Paragraph 8, Transcript p. 45, fol. 91.

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
First Amendment. Rights of Conscience, Freedom of Press, etc.	First Amendment Paragraph 5, Adding New Paragraph 40, Transcript p. 22, fol. 27 and 28.
Fourteenth Amendment (General).	Petition Paragraph 14, Transcript pp. 5-6, fol. 6-7. Petition Paragraph 34 (f), Transcript p. 12, fol. 15. First Amendment Paragraph 2, Transcript p. 20, fol. 25 and 26. First Amendment Paragraph 2, Adding New Paragraph 37, Transcript pp. 20 and 21, fol. 25 and 26.
Due Process Clause of Fourteenth Amendment.	Adding New Paragraph 38, Transcript p. 21, fol. 26. Third Assignment of Error, Transcript p. 39, fol. 55-56. Statement Paragraph 5, Transcript p. 45, fol. 90.
Equal Protection Clause of Fourteenth Amendment.	Fourth Assignment of Error, Transcript p. 39, fol. 56. Statement Paragraph 4, Transcript p. 44, fol. 90.
Privileges and Immunities Clause of Fourteenth Amendment.	Fifth Assignment of Error, Transcript p. 39, fol. 56. Statement Paragraph 6, Transcript p. 45, fol. 90.

Portions of Federal Constitution Referred to.	Corresponding Portion of Record.
Fifteenth Amendment. Right to vote on account of race, color, etc.	Petition Paragraph 15, Transcript p. 6, fol. 7. Petition Paragraph 30, Transcript p. 10, fol. 12. Petition Paragraph 34 (g), Transcript p. 12, fol. 15.
Nineteenth Amendment. Equal Suffrage Amendment.	Petition Paragraph 16, Transcript p. 6, fol. 7 and 8. Petition Paragraph 26, Transcript pp. 8-9, fol. 11. Petition Paragraph 34 (h), Transcript p. 12, fol. 15. First Amendment Paragraph 2, Transcript p. 24, fol. 31. Seventh Assignment of Error, Transcript p. 40, fol. 57. Statement Paragraph 7, Transcript p. 45, fol. 90-91.

Other grounds relied on in the statement as an alleged basis of federal jurisdiction include:

Nature of Ground.	Corresponding Portion of Record.
Exemption of citizens above sixty from payment of tax.	Petition Paragraph 26, Transcript pp. 8-9, fol. 11. Petition Paragraph 34 (j), Transcript p. 12, fol. 15-16. First Amendment Paragraph 1, Transcript p. 24, fol. 31. Statement Paragraph 1, Transcript p. 43, fol. 88. Statement Paragraph 4, Transcript p. 44, folio 90.
That the Right to Vote Is a Right Arising by Virtue of the Constitution of the United States.	Petition Paragraph 29, Transcript pp. 9-10, fol. 12. First Amendment Paragraph 4; Adding New Paragraph 39, Transcript p. 21, fol. 26 and 27. Statement Paragraph 2, Transcript p. 43, fol. 88.
That to require payment of poll taxes as a prerequisite to voting is unlawful.	Petition Paragraph 34 (k), Transcript pp. 12-13, fol. 16. Statement Paragraph 3, Transcript p. 44, fol. 89-90.

SUPREME COURT OF THE UNITED STATES.

No. 9.—October Term, 1937.

Nolen R. Breedlove, Appellant, *vs.* T. Earl Suttles, as Tax Collector. } Appeal from the Supreme Court of the State of Georgia.

[December 6, 1937.]

Mr. Justice Butler delivered the opinion of the Court.

A Georgia statute provides that there shall be levied and collected each year from every inhabitant of the State between the ages of 21 and 60 a poll tax of one dollar, but that the tax shall not be demanded from the blind or from females who do not register for voting. Georgia Code, 1933, § 92-108. The state constitution declares that to entitle a person to register and vote at any election he shall have paid all poll taxes that he may have had opportunity to pay agreeably to law. Art. II, § I, par. III; Code, § 2-603. The form of oath prescribed to qualify an elector contains a clause declaring compliance with that requirement. § 34-103. Tax collectors may not allow any person to register for voting unless satisfied that his poll taxes have been paid. § 34-114. Appellant brought this suit in the superior court of Fulton county to have the clause of the constitution and the statutory provisions above mentioned declared repugnant to various provisions of the Federal Constitution and to compel appellee to allow him to register for voting without payment of poll taxes. The court dismissed his petition. The state supreme court affirmed. 183 Ga. 189.

The pertinent facts alleged in the petition are these. March 16, 1936, appellant, a white male citizen 28 years old, applied to appellee to register him for voting for federal and state officers at primary and general elections. He informed appellee he had neither made poll tax returns nor paid any poll taxes and had not registered to vote because a receipt for poll taxes and an oath that he had paid them are prerequisites to registration. He demanded that appellee administer the oath, omitting the part declaring payment of poll taxes, and allow him to register. Appellee refused.

Appellant maintains that the provisions in question are repugnant to the equal protection clause and the privileges and immunities clause of the Fourteenth Amendment and to the Nineteenth Amendment.

1. He asserts that the law offends the rule of equality in that it extends only to persons between the ages of 21 and 60 and to women only if they register for voting and in that it makes payment a prerequisite to registration. He does not suggest that exemption of the blind is unreasonable.

Levy by the poll has long been a familiar form of taxation, much used in some countries and to a considerable extent here, at first in the Colonies and later in the States. To prevent burdens deemed grievous and oppressive, the constitutions of some States prohibit or limit poll taxes. That of Georgia prevents more than a dollar a year. Art. VII, § II, par. III; Code, § 2-5004. Poll taxes are laid upon persons without regard to their occupations or property to raise money for the support of government or some more specific end.[1] The equal protection clause does not require absolute equality. While possible by statutory declaration to levy a poll tax upon every inhabitant of whatsoever sex, age or condition, collection from all would be impossible for always there are many too poor to pay. Attempt equally to enforce such a measure would justify condemnation of the tax as harsh and unjust. See *Faribault* v. *Misener,* 20 Minn. 396, 398; *Thurston County* v. *Tenino Stone Quarries,* 44 Wash. 351, 355; *Salt Lake City* v. *Wilson,* 46 Utah 60, 66, *et seq.* Collection from minors would be to put the burden upon their fathers or others upon whom they depend for support.[2] It is not unreasonable to exclude them from the class taxed.

Men who have attained the age of 60 are often, if not always, excused from road work, jury duty and service in the militia.[3] They have served or have been liable to be called on to serve the public to the extent that the State chooses to require. So far as concerns equality under the equal protection clause, there is no substantial

[1] Dowell, History of Taxation and Taxes in England, Vol. III, c. 1. Bryce, the American Commonwealth, c. XLIII. Cooley, The Law of Taxation (4th Ed.) §§ 40, 1773. Hylton *v.* United States, 3 Dall. 171, 175, 182. Short *v.* State of Maryland, 80 Md. 392, 397, *et seq.* Faribault *v.* Misener, 20 Minn. 396.

[2] Section 74-105, Georgia Code, declares: "Until majority [21 years] it is the duty of the father to provide for the maintenance, protection and education of his child."

[3] In Georgia, men are excused from road work at 50 (§ 95-401) from jury duty at 60 (§ 59-112) and from liability for service in the militia at 45 (§ 86-201; see also § 86-209).

difference between these exemptions and exemption from poll taxes. The burden laid upon appellant is precisely that put upon other men. The rate is a dollar a year, commencing at 21 and ending at 60 years of age.

The tax being upon persons, women may be exempted on the basis of special considerations to which they are naturally entitled. In view of burdens necessarily borne by them for the preservation of the race, the State reasonably may exempt them from poll taxes. Cf. *Muller* v. *Oregon*, 208 U. S. 412, 421, *et seq.* *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 63. *Riley* v. *Massachusetts*, 232 U. S. 671. *Miller* v. *Wilson*, 236 U. S. 373, *Bosley* v. *McLaughlin*, 236 U. S. 385. The laws of Georgia declare the husband to be the head of the family and the wife to be subject to him. § 53-501. To subject her to the levy would be to add to his burden. Moreover, Georgia poll taxes are laid to raise money for educational purposes, and it is the father's duty to provide for education of the children. § 74-105. Discrimination in favor of all women being permissible, appellant may not complain because the tax is laid only upon some or object to registration of women without payment of taxes for previous years. *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 447. *Rosenthal* v. *New York*, 226 U. S. 260, 270.

Payment as a prerequisite is not required for the purpose of denying or abridging the privilege of voting. It does not limit the tax to electors; aliens are not there permitted to vote, but the tax is laid upon them, if within the defined class. It is not laid upon persons 60 or more years old, whether electors or not. Exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution. Cf. *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44.

2. To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. *Minor* v. *Happersett*, 21 Wall. 162, 170 *et seq.* *Ex parte Yarbrough*, 110 U. S. 651, 664-665. *McPherson* v. *Blacker*, 146 U. S. 1, 37-38. *Guinn* v. *United States*, 238 U. S. 347, 362. The privileges and immunities protected are only those that arise

from the Constitution and laws of the United States and not those that spring from other sources. *Hamilton* v. *Regents,* 293 U. S. 245, 261.

3. The Nineteenth Amendment, adopted in 1920, declares: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." It applies to men and women alike and by its own force supersedes inconsistent measures, whether Federal or state. *Leser* v. *Garnett,* 258 U. S. 130, 135. Its purpose is not to regulate the levy or collection of taxes. The construction for which appellant contends would make the amendment a limitation upon the power to tax. Cf. *Minor* v. *Happersett,* supra, 173; *Bowers* v. *Kerbaugh-Empire Co.,* 271 U. S. 170, 173-174. The payment of poll taxes as a prerequisite to voting is a familiar and reasonable regulation long enforced in many States and for more than a century in Georgia.[4] That measure reasonably may be deemed essential to that form of levy. Imposition without enforcement would be futile. Power to levy and power to collect are equally necessary. And, by the exaction of payment before registration, the right to vote is neither denied nor abridged on account of sex. It is fanciful to suggest that the Georgia law is a mere disguise under which to deny or abridge the right of men to vote on account of their sex. The challenged enactment is not repugnant to the Nineteenth Amendment.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[4] Constitution of 1798, Art. IV, § 1 (2 Thorpe, Federal and State Constitutions, p. 800). Act of Dec. 12, 1804 (Cobb, New Digest Laws of Georgia, p. 1044).